BRUCE McPHERSON | SECRETARY OF STATE | STATE OF CALIFORNIA
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July 28, 2006

Chairman Paul DeGregorio
U.S. Election Assistance Commission
1225 New York Avenue N.W. – Suite 1100
Washington, DC 20005

Dear Commissioner DeGregorio:

Enclosed for your review is the California Secretary of State's response to the U.S. Election Assistance Commission's (EAC) audit findings. Initially submitted to EAC Executive Director, Tom Wilkey, a copy of this appeal is being forwarded per a request from your office.

Please contact Dora Mejia, Chief of Management Services Division, to discuss this response.

Sincerely,

Janice Lumsden
Assistant Secretary of State, Operations

Enclosure

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June 16, 2006

Mr. Thomas R. Wilkey
Executive Director
U.S. Election Assistance Commission
1225 New York Avenue, N.W., Suite 1100
Washington, D.C. 20005

Dear Mr. Wilkey:

Thank you for the opportunity to review and respond to the U.S. Election Assistance Commission's (EAC) 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 as conducted by the Department of the Interior, Office of the Inspector General (OIG) on behalf of the EAC.

Consultant Services
We disagree with the OIG finding that the Secretary of State (SOS) inappropriately modified purchase orders to extend contracts for a law firm in order to avoid competitively procuring other services needed by the SOS, and to circumvent cost limitations placed on the contract. The OIG states, "It is apparent from internal state reviews of this contract that the work could have been performed by California state attorneys."

The SOS received an opinion from the California Attorney General, which says, in summary, that the SOS is authorized to pay Renne & Holtzman Public Law Group, LLP for services rendered. As to the issue of hours paid in excess as allowed by the contract, in February 2006, the SOS reconciled all invoices against the contract terms to determine the amount of overpayment and amount owed to the firm. As a result of the reconciliation, $27,570.75 was owed to the firm. Consequently, while there was an overpayment in one fiscal year, it was offset in a subsequent year, and the firm was not overpaid attorneys' fees. The reconciliation can be provided at your request.

County Grants
In a December 2005 letter to the EAC, the SOS requested guidance on the use of HAVA funds. Its May 3, 2006 response stated, "The EAC waives its right to approve equipment purchases in two instances. EAC commissioners have previously determined that the EAC would not require prior approval for (1) voting equipment procured to meet HAVA Title III, § 301 requirements or for (2) equipment procured *solely* to establish and implement the computerized statewide voter registration list required in HAVA § 303." HAVA Sec. 301(b) defines the term "voting system" as:

- the total combination of mechanical, electromechanical, or electronic equipment (including software, firmware, and documentation required to program, control, and support the equipment) that is used to: (1) define ballots; (2) cast and count votes; (3) report or display election results; and (4) maintain and produce any audit trail information; and

- the practices and associated documentation used to: (1) identify system components and versions of such components; (2) test the system during its development and maintenance; (3) maintain records of system errors and defects; (4) determine specific system changes to be made to a system after the initial qualification of the system; and (5) make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

Equipment purchased by counties is an allowable use of HAVA funds as it permitted for the proper and efficient performance of the HAVA program. The purchased equipment consisted of the following:

Sonoma County – Envelope printer $12,857 and high volume extraction processing system $50,800

Sonoma County's Permanent Absentee Voting (PAV) objectives were to increase the volume of PAV in the county, thereby increasing voter participation. The project included mailing of PAV postcards and applications, purchase and installation of timesaving equipment for processing permanent absentee ballots, and producing polling place posters about PAV. Resources needed to fulfill the project included funding for printing, postage and equipment.

Via this process the number of permanent absentee voters in the county would be increased and in turn increase overall voter participation in the November 2004 General Election. Grant funded activities included the purchase of an envelope printer and a high-volume rapid extraction mail processing system to facilitate and expedite printing and processing the additional absentee ballot envelopes generated by the increase in permanent absentee voters. Increasing the number of permanent absentee voters without the equipment to implement the program could have resulted in a decrease in voter turnout as opposed to the stated goal of increasing voter turnout.

Permanent Absentee Voting meets the mandates of HAVA Title I, Section 101(b)(1)(B) by improving the administration of elections for Federal office. Purchasing equipment to facilitate the implementation and expansion of Permanent Absentee Voting falls under the provisions of HAVA Title I, Section 101(b)(1)(F), improving, acquiring, leasing, modifying or replacing voting systems and technology and methods for casting and counting votes.

Sonoma County considers Permanent Absentee Voting, including the equipment necessary to prepare envelopes for mailing of ballots and equipment to extract the voted ballots from the return envelopes to be components of our voting system pursuant to HAVA Title III Section 301 (b). The equipment purchased was used to cast and count votes. Permanent Absentee Voting, though not the only method provided for voters with disabilities, does provide a significant number of voters with the means to cast a ballot in a private and independent manner. Sonoma County would not have had the ability to address the Permanent Absentee envelopes or process

the returned ballots without the resources provided by the Help America Vote Act funding.

It should be added that the increased number of permanent absentee voters in Sonoma County in November 2004 did result in an unprecedented voter turnout of 89.4%.

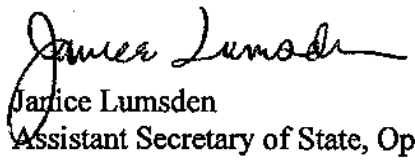
Lassen County – Scanner and components $5,167.32
With the advent of HAVA requirements for new voting systems, updated voter registration materials, and military and overseas voting procedures, it became clear that Lassen County needed to upgrade its website to improve on-line communications with voters at home and abroad. The county needed a means to prepare graphic visual aids for poll worker training and voter education outreach presentations. Because Lassen is a small, rural county, elections officials did not have the in-house capability to create the graphic images necessary to educate voters on how to use the new voting machines, either in printed materials or in visual aids used in voter education outreach programs. The scanner has proven to be invaluable in the county's efforts to create interesting and informative graphic images for use in poll worker training programs and instruction booklets and in materials for voter education programs.

Los Angeles County - Photocopier and accessories $6,972.50, and two digital camera kits and accessories $8,722.89 and $8,335.25, and one LaserJet photocopier $10,676.40
This equipment was used by the County of Los Angeles for production of materials for its "Got Dots" voter education campaign. The "Got Dots" campaign was conceived as a way of informing voters in a concise and memorable way that the voting system had been converted from a pre-scored punch card system, which was decertified by order of the California Secretary of State and "discouraged" by the Help America Vote Act of 2002, to an optical scan system. Rather than "punching a hole" in the ballot (which could produce a "chad"), the converted system required voters to "fill in the dot" with a marking pen. Digital cameras were used to produce visual representations used for production of "hard copy" and for Internet posting. The photocopier was used to copy materials for pollworker training.

For the above equipment, the SOS surveyed vendors to determine the current cost of the purchased equipment. For those items with a unit cost over $5,000, the current costs were 18% higher than the amounts paid, which indicates the cost was reasonable given that inflation alone could not account for the price difference. The envelope printer and high volume extraction system was purchased from the only vendor who was able to deliver the equipment by the date needed for the November 2004 election cycle. Detailed back-up data is available upon request.

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

Sincerely,



Janice Lumsden
Assistant Secretary of State, Operations