



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

FINAL REPORT:

**Administration of Payments Received
Under the Help America Vote Act by the
Nebraska Secretary of State**

APRIL 2003 THROUGH SEPTEMBER 30, 2012

**Report No.
E-HP-NE-07-12
September 2013**



U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1201 New York Ave. NW - Suite 300
Washington, DC 20005

Memorandum

September 12, 2013

To: Alice Miller
Acting Executive Director

From: Curtis W. Crider *Curtis W. Crider*
Inspector General

Subject: Final Performance Audit Report – Administration of Payments Received
Under the Help America Vote Act by the Nebraska Secretary of State
(Assignment Number E-HP-NE-07-12)

We contracted with the independent certified public accounting firm of McBride, Lock & Associates to audit the administration of payments received under the Help America Vote Act (HAVA) by the Nebraska Secretary of State (SOS).

In its audit, McBride, Lock & Associates concluded that the Nebraska Secretary of State (SOS) generally accounted for and expended the HAVA funds in accordance with applicable requirements for the period from April 22, 2003 through September 30, 2012. However the following exceptions were identified;

- The SOS submitted financial reports that could not be supported by underlying accounting records.
- The SOS did not accurately charge payroll costs to the grant based on percentage of effort for each of the State employees.
- The SOS property records were not adequate per 41 CFR 105-71.132.
- The SOS expended \$10,000 of HAVA funds for purposes that are not allowable under the award's terms and conditions or HAVA regulations.
- The SOS did not have established procurement policies for soliciting services.

In its August 29, 2013 response to the draft report (Attachment A-1), the SOS provided comments to the findings and corrective actions, as applicable, to address the recommendations. The SOS did not agree with the questioned costs of \$38,617 related to unsupported payroll costs or that it spent grant funds for unallowable purposes.

In the report McBride, Lock & Associates summarized the SOS's response to the recommendations, as well as their comments on the responses after the recommendations. Also included in the report is the EAC response to the draft report (Appendix A-2), dated August 12, 2013, which indicated that the EAC would work with the SOS to ensure corrective action.

We would appreciate being kept informed of the actions taken on our recommendations as we will track the status of their implementation. Please respond in writing to the finding and recommendation included in this report by November 13, 2013. Your response should include information on actions taken or planned, targeted completion dates, and titles of officials responsible for implementation.

To fulfill our responsibilities under Government Auditing Standards, the Office of Inspector General:

- Reviewed McBride, Lock & Associates' approach and planning of the audit;
- Evaluated the qualifications and independence of the auditors;
- Monitored the progress of the audit at key points;
- Reviewed the audit report, prepared by McBride, Lock & Associates to ensure compliance with Government Auditing Standards; and
- Coordinated issuance of the audit report.

McBride, Lock & Associates is responsible for the attached auditor's report and the conclusions expressed in the report. We do not express any opinion on the conclusions presented in McBride, Lock & Associates audit report.

The legislation 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.

If you have any questions regarding this report, please call me at (202) 566-3125.

Attachment

cc: Director of Grants and Payments

Performance Audit Report

**Administration of Payments Received Under the Help America Vote Act by
the Nebraska Secretary of State**

Prepared for

**The United States Election Assistance Commission (EAC)
Office of Inspector General**

By

McBride, Lock & Associates

July 2013

McBRIDE, LOCK & ASSOCIATES

CERTIFIED PUBLIC ACCOUNTANTS
KANSAS CITY

**Performance Audit Report
Administration of Payments Received Under the Help America Vote Act by
the Nebraska Secretary of State**

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	1
BACKGROUND	2
AUDIT OBJECTIVES	4
SCOPE AND METHODOLOGY	5
AUDIT RESULTS	5
APPENDICES:	
Appendix A-1: Response of the Nebraska Secretary of State to the Draft Report	
Appendix A-2: Response of the U.S. Election Assistance Commission to the Draft Report	
Appendix B: Audit Methodology	
Appendix C: Monetary Impact as of September 30, 2012	

**U.S. Election Assistance Commission
Performance Audit Report
Administration of Payments Received Under the Help America Vote Act by
the Nebraska Secretary of State**

EXECUTIVE SUMMARY

McBride, Lock & Associates was engaged by the United States Election Assistance Commission (EAC) Office of the Inspector General to conduct a performance audit of the Nebraska Secretary of State's Office (Office) from inception in April 22, 2003 through September 30, 2012 to determine whether the Office used payments authorized by Sections 101, 102, and 251 of the Help America Vote Act of 2002 (the HAVA) in accordance with HAVA and applicable requirements; accurately and properly accounted for property purchased with HAVA payments and for program income; maintained state expenditures at a level not less than the level maintained in the fiscal year ending prior to November 2000; and met HAVA requirements for Section 251 funds for an election fund and for a matching contribution.

In addition, the Commission requires states to comply with certain financial management requirements, specifically:

- Comply with the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Government*, 41 CFR 105-71, (originally Office of Management and Budget Circular A-102, also known as the "Common Rule").
- Expend payments in accordance with cost principles set forth in *Cost Principles for State and Local Governments*, 2 C FR 225, (originally Office of Management and Budget Circular A-87) for establishing the allowability or unallowability of certain items of cost for federal participation.
- Follow the requirements of the Federal Cash Management and Improvement Act.
- Submit detailed annual financial reports on the use of Title I and Title II payments.
- Comply with the provisions of *Audits of States, Local Governments and Non-Profit Organizations* (Office of Management and Budget Circular A-133).

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

Based on the audit procedures performed, except for the matters discussed below, we concluded that the Office generally accounted for and expended the Grant funds in accordance with the

requirements mentioned above for the period from April 22, 2003 through September 30, 2012. The exceptions are as follows:

1. The Office submitted financial reports that could not be supported by underlying accounting records.
2. The Office did not accurately charge payroll costs to the grant based on percentage of effort for each of the State employees.
3. The Office property records were not adequate per 41 CFR 105-71.132
4. The Office expended \$10,000 of HAVA funds for purposes that are not allowable under the award's terms and conditions or HAVA regulations.
5. The Office does not have established procurement policies for soliciting services.

We have included in this report as Appendix A, the Secretary of State's written response to the draft report. Such response has not been subjected to the audit procedures and, accordingly, we do not provide any form of assurance on the appropriateness of the response or the effectiveness of the corrective actions described therein.

BACKGROUND

The Help America Vote Act of 2002 (HAVA) created the U.S. Election Assistance Commission (Commission) to assist States and insular areas (hereinafter referred to as States) with improving the administration of federal elections and to provide funds to States to help implement these improvements. The Commission administers payments to States authorized by HAVA under Titles I and II, as follows:

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

Title II also requires that states must:

- Have appropriated funds equal to five percent of the total amount to be spent for activities for which requirements payments are made.
- Maintain the expenditures of the State for activities funded by the requirements payment at a level that is not less than the expenditures maintained by the State for the fiscal year ending prior to November 2000.
- Establish an election fund for amounts appropriated by the State for carrying out activities for which requirements payments are made, for the Federal requirements payments received, for other amounts as may be appropriated under law and for interest earned on deposits of the fund.

The Awardee – The Nebraska Secretary of State

HAVA funds were awarded to the Nebraska Secretary of State, who is the Chief Election Officer and is charged with working with election officials in the state's 93 counties, the Elections Division oversees election law, the conduct of elections in the state, election tabulation equipment and the state voter registration system. The division accepts candidate filings and tabulates results for statewide, legislative, judicial retention and certain district elections. The division oversees filings for statewide initiative and referendum petitions.

Help America Vote Act State of Nebraska State Plan

The Secretary of State appointed a sixteen-member citizen advisory commission to help in the development of the State Plan. The Commission was called the Nebraska State Plan Commission. Members include the election officials from Nebraska's two largest counties, a mid-size county election official, a former President of the Nebraska County Clerks Association, a representative from the Secretary of State's office and representatives from various advocacy organizations including the disabled community.

The objectives of the project funded by HAVA, as set forth in the state plan, were to purchase equipment to implement the central voter registration system, acquire voting equipment to accommodate people with disabilities and comply with the training mandates of the Act.

The Secretary of State established and is maintaining an election fund for the exclusive purpose of carrying out activities of HAVA. Additionally, the Office has managed all expenditures funded by HAVA and has not distributed any of the requirements payments to the local units of government.

AUDIT OBJECTIVES

The objectives of our audit were to determine whether the Office:

1. Used payments authorized by Sections 101, 102, and 251 of the Grant in accordance with Grant and applicable requirements;
2. Accurately and properly accounted for property purchased with Grant payments and for program income;
3. Met HAVA requirements for Section 251 funds for creation of an election fund, providing required matching contributions, and meeting the requirements for maintenance of a base level of state outlays, commonly referred to as Maintenance of Expenditures (MOE).

In addition to accounting for Grant payments, the Grant requires states to maintain records that are consistent with sound accounting principles that fully disclose the amount and disposition of the payments, that identify the project costs financed with the payments and other sources, and that will facilitate an effective audit. The Commission requires states receiving Grant funds to comply with certain financial management requirements, specifically:

- Comply with the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Government*, 41 CFR 105-71, (originally Office of Management and Budget Circular A-102, also known as the “Common Rule”).
- Expend payments in accordance with cost principles set forth in *Cost Principles for State and Local Governments*, 2 C FR 225, (originally Office of Management and Budget Circular A-87) for establishing the allowability or unallowability of certain items of cost for federal participation.
- Follow the requirements of the Federal Cash Management and Improvement Act.
- Submit detailed annual financial reports on the use of Title I and Title II payments.
- Comply with the provisions of *Audits of States, Local Governments and Non-Profit Organizations* (Office of Management and Budget Circular A-133).

SCOPE AND METHODOLOGY

We audited the Grant funds received and disbursed by the Office from April 22, 2003 through September 30, 2012 as shown in the following table:

TYPE OF PAYMENT	FUNDS RECEIVED					FUNDS DISBURSED
	EAC PAYMENT	PROGRAM INCOME	STATE MATCH	INTEREST EARNED	TOTAL AVAILABLE	
Section 101	\$ 5,000,000	\$ 23,083	\$ -	\$ 1,447,233	\$ 6,470,316	\$ 5,628,030
Section 251	15,435,006	629	813,709	898,386	17,147,730	16,947,604
Total	<u>\$20,435,006</u>	<u>\$ 23,712</u>	<u>\$ 813,709</u>	<u>\$2,345,619</u>	<u>\$23,618,046</u>	<u>\$ 22,575,634</u>

Notes to Table of Funds Received and Disbursed:

- (1) The Interest Earned is allocated to the respective sections based on a nalysis of the reported interest earned on the September 30, 2012 Financial Status Reports.

Our audit methodology is set forth in Appendix B.

AUDIT RESULTS

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

Based on the audit procedures performed, except for the matters discussed below, we concluded that the Office accounted for and expended the HAVA funds in accordance with the requirements mentioned above for the period from April 22, 2003 through September 30, 2012. The exceptions to applicable compliance requirements are described below.

Finding No. 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.”

The Office submitted financial reports for Section 101 and Section 251 through September 2012. A summary of the expenditure reconciliation of the Section 101 and Section 251 financial reports to the accounting records as of September 30, 2012 is as follows:

	<u>Section 101 Report</u>	<u>Section 251 Report</u>
Federal Share of Expenditures	\$ 5,000,000	\$ 15,435,005
Program Income Expenditures	343,234	721,767
Recipient Share of Expenditures	<u>-</u>	<u>812,369</u>
Total Expenditures Reported	\$ 5,343,234	\$ 16,969,141
Actual Expenditures Incurred	<u>5,628,030</u>	<u>16,947,604</u>
Expenditures (Under)/Over	<u>\$ (284,796)</u>	<u>\$ 21,537</u>

The Office was not able to provide a reconciliation to explain the above variances. It was stated that certain expenditures recorded as Section 251 expenditures in the accounting records were reported as Section 101 on the annual financial reports.

Additionally, the program income reported by the Office could not be reconciled to the accounting records. The program income reported for Section 101 and Section 251 was \$1,184,783 and \$721,767, respectively. The accounting records disclosed a total of \$2,369,331 for both. Therefore, the program income disclosed in the September 30, 2012 Federal financial reports was understated by \$462,781. This evidences more available funding for the Office to expend on HAVA activities.

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.

Auditor's Response:

The corrective action proposed is responsive to the recommendations.

Finding No. 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.

Auditor’s Response:

The Office disagrees with the \$33,262 questioned for employees who did not code any time to HAVA. However, without compliant time keeping it cannot be assured that the Office is not over-allocating salary to HAVA. The corrective action plans for remaining issues are responsive to the concerns

Finding No. 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 data 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.

Auditor’s Response:

The inventory system has been updated to include the cost for the equipment purchased with HAVA fund. The corrective action has resolved the finding.

Finding No. 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.

Auditor's Response:

We recommend that EAC provide further guidance on the allowability of the Public Service Announcement and the charges for the Communication Director.

Finding No. 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.

Auditor's Response:

The corrective action is responsive to the concerns.

We provided a draft of our report to the appropriate individuals of the Office of the Nebraska Secretary of State. We considered any comments received prior to finalizing this report.

The Office responded on August 29, 2013 and generally agreed with the report's findings and recommendations. The EAC responded on August 12, 2013 and stated they would work with the Office to resolve the issues and ensure appropriate corrective action. The Office's complete response is included as Appendix A-1 and the EAC's complete response as Appendix A-2.

McBride, Lock & Associates performed the related audit procedures between March 12, 2013 and July 3, 2013.

(Original Signed by McBride, Lock & Associates)

McBride, Lock & Associates
July 3, 2013



STATE OF NEBRASKA

JOHN A. GALE
SECRETARY OF STATE

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August 29, 2013

McBride, Lock & Associates
Attn: Ray Miller
1111 Main St.
Kansas City, MO 64105

Dear Mr. Miller:

My office has completed a final review of the Draft Audit Report for the HAVA audit conducted by your firm. Below are our responses to the Findings and Recommendations.

Finding No.1-Financial Reporting

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.

Finding No.2- Unsupported Payroll Costs Charged to the Grant

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.

(a) 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.

Finding No. 3-Inadequate Equipment Management

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.

Finding No. 4- Unallowable Cost

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

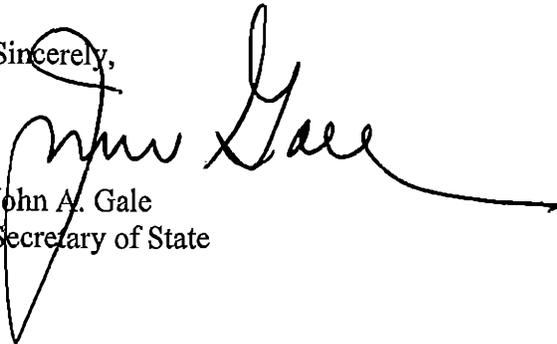
indirectly. While some transfer may be needed to the election fund, only a full review of the contractor's nine years of invoices can determine what was properly HAVA and what was not. The Office is willing to perform a full item by item review to confirm what might be a proper allocation of the contractor's time to HAVA and what was not. Per the exit conference, we will work with EAC Audit Resolution as to any necessary corrective action.

Finding No. 5- Procurement of Contract Services

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.

Thank you for the opportunity to respond to the draft findings and should you have questions about this information, please don't hesitate to contact Suzie Hinzman in this office.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Gale". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John A. Gale
Secretary of State



EAC RESPONSE TO THE DRAFT AUDIT:
*OIG Performance Audit Report on the Administration of
Payments Received Under the Help America Vote Act by the
State of Nebraska, for the Period April 2003 through
September 30, 2012.*

August 12, 2013

MEMORANDUM

To: Curtis Crider
Inspector General

From: Alice P. Miller, Chief Operating Officer &
Acting Executive Director *[Signature]*

Subject: Draft Performance Audit Report – “Administration of Payments
Received Under the Help America Vote Act by the State of
Nebraska”

Thank you for this opportunity to review and respond to the draft audit report for the Nebraska Secretary of State (SOS).

The Election Assistance Commission (EAC) will work with the SOS to ensure appropriate corrective action.

AUDIT METHODOLOGY

Our audit methodology included:

- Assessing audit risk and significance within the context of the audit objectives.
- Obtaining an understanding of internal control that is significant to the administration of the HAVA funds and of relevant information systems controls as applicable.
- Identifying sources of evidence and the amount and type of evidence required.
- Determining whether other auditors have conducted, or are conducting, audits of the program that could be relevant to the audit objectives.

To implement our audit methodology, below are some of the audit procedures we performed.

- Interviewed appropriate Office employees about the organization and operations of the HAVA program.
- Reviewed prior single audit reports and other reviews related to the State's financial management systems and the HAVA program for the period under review.
- Reviewed policies, procedures and regulations for the Office management and accounting systems as they relate to the administration of the HAVA program.
- Analyzed the inventory lists of equipment purchased with HAVA funds
- Tested major purchases and the supporting documentation.
- Tested randomly sampled payments made with HAVA funds.
- Tested payments and documentation provided by subawardees to verify activities were allowable, allocable, and reasonable in accordance with federal requirements and HAVA award terms and conditions.
- Evaluated compliance with the requirements for accumulating financial information reported to the Commission on the financial status reports and progress reports, accounting for property, purchasing HAVA related goods and services, and accounting for salaries.
- Verified the establishment and maintenance of an election fund.
- Verified the State expenditures met the Maintenance of Expenditures requirement
- Conducted site visits of selected counties to observe physical security/safeguard of equipment purchased with HAVA funds and ensure compliance with federal regulation.

MONETARY IMPACT AS OF SEPTEMBER 30, 2012

<u>Description</u>	<u>Questioned Costs</u>	<u>Additional Funds for Program</u>
Unsupported Payroll Costs	\$ 38,617	\$ -
Unallowable Advertising Costs	<u>39,828</u>	<u>-</u>
Total	<u>\$ 78,445</u>	<u>\$ -</u>

OIG's Mission

The OIG audit mission is to provide timely, high-quality professional products and services that are useful to OIG's clients. OIG seeks to provide value through its work, which is designed to enhance the economy, efficiency, and effectiveness in EAC operations so they work better and cost less in the context of today's declining resources. OIG also seeks to detect and prevent fraud, waste, abuse, and mismanagement in these programs and operations. Products and services include traditional financial and performance audits, contract and grant audits, information systems audits, and evaluations.

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