

NEW HAMPSHIRE
DEPARTMENT OF STATE

William M. Gardner
Secretary of State



Robert P. Ambrose
Senior Deputy Secretary of State

David M. Scanlan
Deputy Secretary of State

Anthony B. S. Stevens
Assistant Secretary of State

June 7, 2018

Brian Newby, Executive Director
U.S. Election Assistance Commission
1335 East-West Highway, Suite 4300
Silver Spring, MD 20910

Re: Request for Security Funds

Dear Mr. Newby:

The purpose of this letter is to certify that the State of New Hampshire will use the funds provided under the Notice of Grant Award, Agreement #NH18101001, for activities consistent with the laws described in Section 906 of HAVA and will not use the funds in a manner that is inconsistent with the requirements of Title III of HAVA.

We further certify that we have reviewed and accept the terms of the award as specified in the Notice of Grant Award. Our UEI number (formerly DUNS) is **36-1857758** and the signed Certification Regarding Lobbying is enclosed. I have attached an accompanying letter which expresses my reservations about the Election Assistance Commission's authority to issue requirements and regulations and the 5-year limit on disbursement of the funds.

We are requesting \$3,102,253 at this time. We plan to develop the program budget and narrative by July 16, 2018.

If you have any questions about this request, please contact Anthony Stevens (Tel: (603) 271-8238) or Anthony.Stevens@sos.nh.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State
New Hampshire

Cc: Mark Abbott,
Director of Payments and Grants
Enclosed: Reservations Letter
Federal Lobbying Certification

NEW HAMPSHIRE
DEPARTMENT OF STATE

William M. Gardner
Secretary of State



Robert P. Ambrose
Senior Deputy Secretary of State

David M. Scanlan
Deputy Secretary of State

Anthony B. S. Stevens
Assistant Secretary of State

June 7, 2018

Mr. Brian Newby
U.S. Election Assistance Commission
1335 East-West Highway, Suite 400
Silver Spring, MD 20910

Re: Reservations on forms

Acknowledgement of Notice of Grant Award/Grant Package
Certifications Regarding Lobbying

Dear Mr. Newby,

I look forward to receiving the Election Reform Program payments adopted in the Financial Services and General Government Appropriations Bill, 2018.

With reference to Mark Robbins' letter dated November 4, 2011, which documented the agreement between the Election Assistance Commission and my office for previous payments, the following are my reservations regarding my signature today on the above referenced letter and form which your office requires to be signed in order for the State of New Hampshire to receive payments it is owed under "Election Reform Program" payments.

- 1) The Election Reform Program authorizes the Election Assistance Commission to make payments to States for activities to improve the administration of elections for Federal office, including to enhance election technology and make election security improvements, as authorized by section 101, 103 and 104 of such Act. HAVA Section 104 states, "Any payment made to a State under this title shall be available to the State without fiscal year limitation (subject to subsection (c)(2)(B))." Accordingly, Election Security Reform payments are "no-year money."

State House Room 204, 107 N. Main St., Concord, NH 03301

Phone: 603-271-8238 Fax: 603-271-8242

TDD Access: Relay NH 1-800-735-2964

www.sos.nh.gov

email: NHVotes@sos.nh.gov

2) HAVA Section 209: "The Election Assistance commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-7(a))." Accordingly, any EAC requirements in the Notice of Grant Award appear to be an unauthorized regulation.

In signing the enclosed forms subject to the above express reservations, the State reserves the right to contest the applicability of the above-referenced forms.

Sincerely,



William M. Gardner
Secretary of State
New Hampshire

Encl: Letter from Mark A. Robbins, EAC General Counsel, Nov. 4, 2011.



U.S. ELECTION ASSISTANCE COMMISSION
1201 NEW YORK AVENUE, N.W., SUITE 300
WASHINGTON, D.C. 20005

November 4, 2011

Anthony Stevens
Assistant Secretary of State
State of New Hampshire 107 North Main Street, Suite 204
Concord, NH 03301

Dear Secretary Stevens:

This will confirm the substance of our discussion on September 21, 2011 in which we tentatively agreed, pending the approval of our supervisors, to move beyond the present impasse between the U.S. Election Assistance Commission (EAC) and New Hampshire's Secretary of State with regard to the distribution of §251 Help America Vote Act (HAVA) requirements payments for the years 2008-2010.

The State of New Hampshire (State) objects to the EAC requirement that it enter into a grant agreement which requires certification of compliance with various Federal laws and regulations concerning the use of Federal money. The State contends that the EAC is limited in its ability to require certification to those provisions contained in HAVA. The EAC believes that it is obligated to follow not just the requirements of HAVA when distributing the requirements payments, but also guidance issued by other relevant and controlling Federal authorities, including circulars issued by the Office of Management and Budget.

Further complicating this pending matter is the EAC's present lack of a quorum of commissioners.

I have agreement from the current remaining two commissioners and the executive director to offer the following compromise to move this matter forward. If the State will execute the grants agreement without any iteration, but accompanies it with a formal protest outlining its objections (in line with correspondence we have already exchanged), the EAC will release the 2008-2010 requirements payments allotted to New Hampshire, and will agree to present this issue to the full Commission when a quorum is restored, and request its referral of the matter to a body of competent jurisdiction for resolution, such as the U.S. Government Accountability Office, or any other such entity that the EAC and the State agree upon. In the meantime, the EAC will formally note the State's protest and will not take the position that the signed grant agreement in any way estops the State from asserting its stated position.

If these terms are acceptable to the State, please proceed with execution of the grant agreement, and I will instruct EAC staff to begin processing transfer of the State's 2008-2010 requirements payments.

Sincerely,

Mark A. Robbins
General Counsel

cc: U.S. Department of Justice
Civil Rights Division, Voting Section
U.S. Attorney for the District of New Hampshire

To: US Election Assistance Commission

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

William M. Gardner
NAME

Secretary of State
TITLE

New Hampshire
Department of State
ORGANIZATION


SIGNATURE

6/7/2018
DATE

ii) Recipient integrity and performance matters. If the total Federal share of the Federal award may include more than \$500,000 over the period of performance, the Federal awarding agency must include the term and condition available in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters. See also 2 C.F.R. §200.113 Mandatory disclosures.