

MICHAEL HOWE
SECRETARY OF STATE

WEBSITE sos.nd.gov



PHONE (701) 328-2900
EMAIL sos@nd.gov

SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 23, 2023

Steven Frid, Executive Director
U.S. Election Assistance Commission
633 3rd Street, NW, Suite 200
Washington, DC 20001

Dear Executive Director Frid:

The purpose of this letter is to request \$1,000,000 of the State of North Dakota's Help America Vote Act (HAVA) Election Security allocation.

The State of North Dakota will use the funds provided under the HAVA Election Security grant program, 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 Fiscal Year 2023 Election Security Award Packet and Instructions. The signed terms and conditions, program narrative and combined budget have been uploaded to GrantSolutions as required.

Our UEI number (formerly DUNS) is MA23B51G2LM7. If you have any questions about this submission, please contact Deputy Secretary of State, Sandra McMerty at 701-328-3660 or via email slmcmerty@nd.gov or State Election Director, Brian Newby 701-328-3721 or via e-mail bnewby@nd.gov.

Sincerely,

A handwritten signature in black ink that reads "Michael Howe".

Michael Howe
North Dakota Secretary of State

Cc.
EAC Grants, Grants@eac.gov

Terms & Conditions for HAVA Funding

1. [Governing Authority and Purpose](#)
 - a. [2 CFR §200 Requirements](#)
2. [General Terms and Conditions](#)
 - a. [Explanation of Grant Award Notification Definitions](#)
 - b. [Administrative Requirements](#)
 - c. [Payments and Financial Management](#)
 - d. [National Policy Requirements](#)
 - e. [Recipient Integrity and Performance Goals](#)
 - f. [Award Monitoring and the Office of Inspector General](#)
 - g. [Future Budget Periods](#)
 - h. [Conflicts of Interest](#)
 - i. [Terminations Provisions](#)
 - j. [Reporting Requirements](#)
 - k. [Closeout Requirements](#)
3. [Federal Awarding Agency, Program, or Federal Award Specific Terms & Conditions](#)
4. [EAC Agency Contacts](#)
5. [Additional Attachments or Terms](#)

1. Governing Authority & Purpose

As authorized under Section 101 of the Help America Vote Act of 2002 (P.L. 107-252) (HAVA) and provided for in the Consolidated Appropriations Acts of 2018 (Public Law 115-141), 2020 (Public Law 116-93), 2022 (Public Law 117-103) and 2023 (Public Law 117-328) the purpose of this award is to “improve the administration of elections for Federal office, including to enhance election technology and make election security improvements”.

a. 2 CFR §200 Requirements

Award recipients and sub-recipients must adhere to all applicable federal requirements including Office of Management and Budget (OMB) guidance: Title 2 C.F.R. Subtitle A, Chapter II, Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR §200).

Section 209 of HAVA states that the EAC does not have the authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any state except to the extent permitted under a specific section of the National Voter Registration Act. The regulations at 2 C.F.R. 200 are government-wide regulations for federal grants. They are not regulations issued or promulgated by the EAC. The EAC and its grantees are subject to these and other government-wide regulations.

2. General Terms and Conditions

a. Explanation of Grant Award Notification Definitions

Assistance Listing Program Title: Categorical title language defined by CFDA

Assistance Type: The method by which the award is provided, i.e., Grant, Cooperative Agreement, or Contract.

Authorized Carryover: Carryover is the unspent balance of funds from prior budget periods that the recipient may request to use in the current budget period for unmet needs for the goals and objectives of the grant.

Award Action Type: Identifies purpose of the document (i.e.: “New” award)

Award Number: A unique, identifying number assigned by the EAC to each application.

Award Type: The assistance category in which funding for this award is provided, i.e., DISCRETIONARY, FORMULA, or BLOCK.

Budget Period Start Date/Budget Period End Date: The complete length of time the recipient is proposed to be funded to complete approved activities.

Catalog of Federal Domestic Assistance Number/Assistance Listing Number (CFDA): Assistance listing detailing public descriptions of federal programs that provide grants, loans, scholarships, insurance, and other types of assistance awards.

Chief State Election Officer: Designated top-level election official that signs and accepts grants on behalf of their entity.

Congressional District of Recipient: Congressional District number related to physical address of grantee. Mark “n/a” for those which do not apply.

Data Universal Number System (DUNS): A D&B DUNS number is a nine-digit number that is recognized as the universal standard to track businesses worldwide through Sam.gov. The transition from DUNS to the [Unique Entity Identifier in April 2022 eliminated use of DUNS](#), though previously made grants will refer to DUNS.

Direct Cost Amount: Amount of expenses directly supporting the grant program.

Employment Identification Number: An entity's unique nine-digit number that identifies your business for tax purposes

FAIN: FAIN (Federal Award Identification Number) is the unique identifying number assigned to all federal finance awards. Since October of 2013, the Office of Management and Budget (OMB) has required all Federal Agencies to issue a FAIN for all financial assistance awards or grants.

Federal Award Date: Date when the Federal award is signed by the authorized official of the Federal awarding agency.

Federal Funds Amount: The dollar amount of Federal funds provided to a recipient during the award periods.

Grantee: The legal name of the recipient or name of the primary organizational unit that was identified in the application, state plan or other documents required to be submitted for funding by the grant program.

HAVA Coordinator: Typically, the lead contact within the state election office or Secretary of State office relied upon for executing the activities related to EAC grants.

Improper Payment: (A) means any payment that should not have been made or that was made in an incorrect amount, including an overpayment or underpayment, under a statutory, contractual, administrative, or other legally applicable requirement; and (B) includes— (i) any payment to an ineligible recipient; (ii) any payment for an ineligible good or service; (iii) any duplicate payment; (iv) any payment for a good or service not received, except for those payments where authorized by law; and (v) any payment that does not account for credit for applicable discounts.

Indirect Cost: The negotiated indirect cost rate agreement (NICRA) or the indirect cost allocation plan approved for the entity. The related amount in proportion to direct cost amount is listed on the NGA.

Non-Federal Dollar Amount/Share (Cost Sharing or Matching): The funds that the recipient is required to contribute to the project, as defined by the program legislation or regulations and/or terms and conditions of the award.

Non-Federal entity: Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Offset: Federal offset occurs when grant funds from the Federal government are withheld to settle a debt which the Federal government considers delinquent.

Project Period Start Date/Project Period End Date: A specific interval of time for which Federal funds are being provided from a particular fiscal year to fund a recipient's approved activities and budget. The start and end dates of the budget period are shown in the NGA.

Research & Development: If the award is made under a Research and Development program this identifier will alert the grantee to additional terms and conditions specific to R&D.

Statutory Authority: The legislative action associated with the agency grant awards.

Treatment of Program Income: The EAC uses the 'additive' methodology of program income. Where incurred, program income is added to the federal funds awarded and used to support related project or program objectives.

Terms and Conditions: Requirements of the award that are binding on the recipient.

Unique Entity Identifier: A unique, identifying number assigned to each recipient for payment purposes. Entities doing business with the federal government use the Unique Entity ID created in SAM.gov.

b. Administrative Requirements

Award recipients and sub-recipients must adhere to all applicable federal requirements including Office of Management and Budget (OMB) guidance: Title 2 C.F.R. Subtitle A, Chapter II, Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200).

Registration of Unique Entity Identifier (UEI) Number and Taxpayer Identification Number (TIN)

in the System for Award Management (SAM): All entities wishing to do business with the federal government must have a unique entity identifier (UEI) per 2 CFR §25.110 and must maintain active status. Currently, the DUNS number, which is a unique nine-character identification number provided by Dun & Bradstreet (D&B) free of charge, is the official UEI. D&B assigns UEI (DUNS) for each physical location of a business. Entities are defined by 2 CFR part 25 subpart C as:

- a. A Governmental organization, which is a State, local government, or Indian Tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition above) may receive a subaward from you unless the entity has provided its UEI number to you.
2. May not make a subaward to an entity unless the entity has provided its UEI number to you.

If your entity is registered in SAM.gov today, your Unique Entity ID (SAM) has already been assigned and is viewable in SAM.gov. This includes inactive registrations. The Unique Entity ID is currently located below the DUNS Number on your entity registration record. Remember, you must be signed in to your SAM.gov account to view entity records.

Federal and EAC Grants Policy Related to Subgrants: Subgrants are allowable when determined as necessary, appropriate, and allocable expenses for HAVA awards. Federal grantees are responsible for ensuring that their subgrantees follow the requirements of their grants. It is incumbent upon the state to make determinations of allowability following the purposes of HAVA and the Cost Principles in 2 CFR §200.400. The grantee must ensure that no payments at the prime or subrecipient level are made that are improper. Grantees must provide the statutory definition of improper payment to subgrantees. The grantee is required to review subgrantee submitted reports for determining their accuracy, propriety, and appropriate use of grant funds. The monitoring of subgrantee compliance with grant program requirements and OMB cost principles is the grantee's responsibility. Advance payments made to subgrants must be deposited in an interest-bearing account. That interest will be reported to the EAC in the FFR and used for HAVA activities. Grantees must also comply with rules set forth in FFATA for reporting on subgrantees.

Federal Funding Accountability Transparency (FFATA): In accordance with 2 CFR Chapter 1, Part 170 REPORTING SUB-AWARD AND EXECUTIVE COMPENSATION INFORMATION, Prime Awardees awarded a federal grant are required to file a FFATA sub-award report by the end of the month following the month in which the prime awardee awards any sub-grant equal to or greater than \$30,000. The reporting requirements are as follows:

- This requirement is for both mandatory and discretionary grants awarded on or after October 1, 2010.
- All sub-award information must be reported by the prime awardee.

- If the initial award is equal to or over \$30,000, reporting of sub-award and executive compensation data is required.
- If the initial award is below \$30,000 but subsequent grant modifications result in a total award equal to or over \$30,000, the award will be subject to the reporting requirements, as of the date the award exceeds \$30,000.
- If the initial award equals or exceeds \$30,000 but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the award continues to be subject to the reporting requirements of the Transparency Act and this Guidance.

For more information, go to www.fsrs.gov.

c. Payments and Financial Management

Payments: HAVA authorizes grant funding on a formula basis, non-competitive per the statute, to make grant payments to states using the voting age population formula described in Sections 101 and 103 of HAVA.

EAC will authorize the Treasury Department to disburse funding identified in the agreement directly to the state. All Federal funds and state cash matching funds must be deposited in the state election fund as described in Section 104 (d) of HAVA. Cash and in-kind match expenditures require the same documentation as federal funds under 2 CFR §200. Interest earned on this award's funds shall be retained in the election fund and used for allowable activities described in Section 101 of HAVA.

Return of federal EAC award dollars may also require the return of incurred interest per 2 CFR §200.305.

In those instances, whereby EAC provides competitive grants, additional or modified payment instructions may be provided.

Prior Approval: To obtain prior approval you must contact the EAC Grants Office through written communication with budget and narrative justification via grants@eac.gov The following types of requests are examples of actions that require prior approval:

- Significant redirection of funds (i.e., cumulative changes of 25% of total award)
- Material changes to the state plan
- Purchase of vehicle
- Capital expenditure

Single Audit Requirements: Grant recipients that expend \$750,000 or more in total Federal awards in a fiscal year must conduct a single or program-specific audit for that year in accordance with the Single Audit Act, as amended, 31 U.S.C. 7501, et seq., and 2 CFR §200, Subpart F. If the recipient expends Federal awards under only one Federal program, it may elect to have a program specific audit if it is otherwise eligible. A recipient that does not expend \$750,000 in Federal awards is exempt from the audit requirements for that year. However, it must continue to conduct financial management reviews of its subrecipients, and its records and its subrecipients' records must be available for review and audit in accordance with 2 CFR §§200.333-200.337 and §200.331(a)(5). Additionally, a recipient acting as a pass-through entity must issue management decisions for audit findings pertaining to the Federal award provided to the subrecipient as required by 2 CFR §200.521 and conduct follow-up on audit findings in a timely manner to ensure that the subrecipient corrects any deficiencies identified in the audit.

Section 101(c) of HAVA (52 U.S.C § 20901), Use of Funds to Be Consistent With Other Laws and Requirements: To access the available formula funds states must submit the certifications required under Section 101(c) of HAVA (52 U.S.C § 20901) as well as provide a budget and program narrative.

Payment Integrity Information Act (PIIA) of 2019: PIIA replaces previous legislation and is primarily intended to improve efforts to identify and reduce Governmentwide improper payments. Grantees are required to assess, prevent and identify Improper Payments. As defined in § 200.428 “Collections of improper Payments” the undersigned is responsible for “the costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 200.305.”

Grantee must ensure that no payments either at the prime or subrecipient level are made that are improper as defined by the PIIA.

Examples of improper payments include:

- Incorrect amounts, overpayments, underpayments that are made to eligible subrecipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for the incorrect amount, and duplicate payments)
- An improper payment includes any payment that was made to an ineligible subrecipient or for an ineligible good or service (as defined in the PIIA), or payments for goods or services not received (except for such payments authorized by law).
- When a grantee’s review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an improper payment.

d. National Policy Requirements

Human Trafficking Provisions: This award is subject to the requirements of Section 106(g) of the “Trafficking Victims Protection Act of 2000” (22 U.S.C.7104). The full text of this requirement is found at <http://www.acf.hhs.gov/grants/award-term-and-condition-for-trafficking-in-persons>.

The undersigned certifies to his or her understanding that this grant is subject to the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) as follows:

- I. Provisions applicable to a recipient that is a private entity.
 - A. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not:
 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
or
 2. Procure a commercial sex act during the period of time that the award is in effect; or
 3. Use forced labor in the performance of the award or subawards under the award.
 - B. We as the federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity:

1. Violates a prohibition in paragraph A of this award term; or
 2. Has an employee who violates a prohibition in paragraph A of this award term through conduct that is either:
 - a. Associated with performance under this award; or
 - b. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)".
- II. Provisions applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is not a private entity—
- A. Is determined to have violated an applicable prohibition of paragraph I.A of this award term; or
 - B. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph I.A of this award term through conduct that is –
 1. Associated with performance under this award; or
 2. Imputed to you using the standards and due process for imputing conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB 12 Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR Part 2200.
- III. Provisions applicable to any recipient.
- A. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph I A of this award term.
 - B. Our right to terminate unilaterally that is described in paragraph (1) and (2) of this section:
 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 2. Is in addition to all other remedies for noncompliance that are available to us under this award.
 - C. You must include the requirements of paragraph I A of this award term in any subaward you make to a private entity.
- IV. Definitions. For purposes of this award term:
- A. "Employee" means either:
 1. An individual employed by you or a subrecipient who is engaged in the performance of

the project or program under this award; or

2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose service are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

B. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

C. "Private entity":

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR §175.25.

2. Includes:

- a. A nonprofit organization, including any non-profit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
- b. A for-profit organization. d. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102)

FY19 National Defense Authorization Act (NDAA) Section 889 and subsequent regulation 2 CFR

§200.216: Section 889 prohibits grantees from using Federal funds to procure or obtain telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Additionally, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) that is used for the purpose of public safety, security of 16 government facilities, physical security surveillance of critical infrastructure, and other national security purposes is covered equipment under Section 889.

The undersigned certifies, to the best of his or her knowledge and belief, that:

The prohibited telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Additionally, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) that is used for the purpose of public safety, security of 16 government facilities, physical security surveillance of critical infrastructure, and other national security purposes is covered equipment under Section 889.

Whistleblower Protection Act: This award and employees working on this award will be subject to the whistleblower rights and remedies within established 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) as found here:

<https://www.law.cornell.edu/uscode/text/41/4712>

An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

The undersigned certifies, to the best of his or her knowledge and belief, that:

This award and employees working on this award will be subject to the whistleblower rights and remedies within established 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) as found here: <https://www.law.cornell.edu/uscode/text/41/4712>

An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

Drug-Free Workplace Requirement: Grantee must establish drug-free workplace policies and procedures consistent with the guidance per 2 C.F.R. § 182.200.

The undersigned certifies, to the best of his or her knowledge and belief, that:

Grantee must establish drug-free workplace policies and procedures consistent with the guidance per 2 C.F.R. § 182.200.

Debarment & Suspension (Nonprocurement): Grantee must establish and abide by the guidance set forth in subpart C of 2 C.F.R. Part 180, including lower tier covered transactions.

The undersigned certifies, to the best of his or her knowledge and belief, that:

Grantee must establish and abide by the guidance set forth in subpart C of 2 C.F.R. Part 180, including lower tier covered transactions.

Prohibition of Text Messaging and Emailing While Driving During Official Federal Grant Business:

Grantees, sub recipients, and their grant personnel are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned vehicle during official grant

business, of from using government supplied electronic equipment to text message or email when driving. This compliance is mandatory under the Executive Order 13513, "Federal Leadership on Reducing Text messaging While Driving" October 1, 2009.

The undersigned certifies, to the best of his or her knowledge and belief, that:

Grantees, sub recipients, and their grant personnel are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned vehicle during official grant business, of from using government supplied electronic equipment to text message or email when driving. This compliance is mandatory under the Executive Order 13513, "Federal Leadership on Reducing Text messaging While Driving" October 1, 2009.

Lobbying Disclosure Act [[Pub. L. 104-65](#), December 19, 1995 and 2 U.S.C. 1601, et. seq.]: 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.

a. Recipient Integrity and Performance

Reporting of Matters Related to Recipient Integrity and Performance: As outlined in 2 CFR §200 Appendix XII, grantors are to review and consider any information about applicants that is within the Federal Awardee Performance and Integrity Information System (FAPIS). To facilitate this review, grantees must maintain their active status in SAM.gov. FAPIS provides confirmation of recipient noncompliance regarding any civil, criminal, or administrative proceedings as defined in 2CFR 200

Paragraph 2 of Appendix XII. This statutory requirement is further defined under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313).

Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (3) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or to affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

b. Award Monitoring and the Office of Inspector General

EAC Grantee Audit Selection and the Office of Inspector General: Under the IG Act, the OIG is authorized to conduct audits, inspections, and evaluations of the EAC and its programs. These include annual audits of the EAC's financial statements as well as periodic audits of recipients of Federal funds distributed by the EAC.

In addition, the OIG receives and investigates complaints of fraud, waste, abuse, and mismanagement in EAC programs or by EAC grant recipients. The OIG maintains an online complaint submission form.

Complaints are taken from EAC employees, EAC grant recipients and any member of the public. Persons making complaints can do so confidentially. Their names will not be released by the OIG without their consent unless the Inspector General determines that it is necessary to do so in the course of the investigation or audit. If presented with information regarding fraud, waste, abuse, or mismanagement of EAC programs or of funding distributed by EAC, complaints may be filed by navigating here:

<https://www.eac.gov/inspector-general/file-a-complaint>

Site visit: EAC may make site visits to review and evaluate recipient records, accomplishments, organizational procedures, and financial control systems; to conduct interviews; and to provide technical assistance as necessary.

Desk review: EAC may conduct desk reviews to make limited verifications of recipient compliance with the terms of their award, conduct a review of the recipient's general management practices, and identify any practice or procedure that may require further scrutiny.

Responding to information requests: Pursuant to 2 CFR §200.336, EAC may request documentation from recipients to monitor the award or to comply with other legal requirements. Failure to make timely responses to such requests may result in award funds being placed on temporary manual hold, reimbursement only, or other remedies as appropriate.

c. Future Budget Periods

Future budget periods will be provided when the current award is terminated upon interim closeout, every five years unless noted otherwise. Where the award type allows, the estimated remaining budget periods for multi-year projects and estimated funds the EAC proposes it will award the recipient will be displayed on the Notice of Award. This is only provided where substantial progress is made by the grantee in completing approved activities and reporting, the EAC determines that continuing the project would be in the best interest of the Government, Congress appropriates sufficient funds under the program, and the recipient has submitted a performance report that provides the most current performance information and budget status of expenditures.

d. Conflicts of Interest

Defined in 2 CFR 200 Sections 200.112, the non-Federal entity must disclose in writing any potential conflict of interest to the EAC.

e. Terminations Provisions

EAC may suspend or terminate this award in accordance with 2 CFR §200.339 and §200.340 (85 FR 49506, 49559-60). In addition, a recipient may suspend or terminate assistance to one of its subrecipients in accordance with 2 CFR §200.339 and §200.340, provided that such action complies with 2 CFR §200.341. 2 CFR §200.340(a)(2). EAC may initiate termination for cause, or when (based on new evidence) there is a significant question about the feasibility or effectiveness of the intended objective of the award.

f. Reporting Requirements

Per 2 CFR §200, program narrative and expenditure reports (Federal Financial Report SF-425) are due by December 29 for the preceding October 1 to September 30 period. Mid-year reports are required once a

year for the period ending March 31st. All final financial and progress reports are due no later than 120 days after the project period end date. Where required, expenditure reports (Federal Financial Report) are due each quarter 30 days after the end of the quarter ending December 31, March 31, and June 30. These requirements provide the minimum reporting required. Individual awards may include more frequent reporting.

Grantees must certify that submitted progress and financial reporting is true, complete, and accurate to the best of their knowledge for which they are aware that any false, fictitious, or fraudulent information may subject me to criminal, civil or administrative penalties. (U.S. Code, Title 18, section 1001). Grantee reporting must also be in accordance with 2 CFR 200.420-475 and affirm that there are no improper payments.

Additional guidance on reporting access, examples, and other specifics may be found at:
<https://www.eac.gov/payments-and-grants/financial-progress-reporting>

*Please review the “Additional Attachments or Terms” section for additional reporting requirements where applicable.

The undersigned certifies, to the best of his or her knowledge and belief, that:

Grantee must ensure that no payments either at the prime or subrecipient level are made that are improper as defined by the Payment Integrity Information Act of 2019. Improper payment reporting as a grantee reporting requirement including an affirmation that all costs are in accordance with 2 CFR 200.420-475 and that there are no improper payments as defined in the PIIA.

g. Closeout Requirements

EAC will close grants for which a final Federal Financial Reports (FFR) and progress report have been submitted. For awards with funds available until fully disbursed, EAC will close expended funds on a five-year cycle and amend awards to carry any unexpended funds forward into a new five-year budget period. As part of the closeout process, EAC needs to confirm the disposition of any equipment bought with grants funds that has a current fair market value over \$5,000, any unused supplies with a current aggregate fair market value over \$5,000 and any amounts owed back to the U.S. Treasury.

Upon executing all requested information and documentation for close out of the award, EAC will issue written confirmation the grant has formally closed.

3. Federal Awarding Agency, Program, or Federal Award Specific Terms & Conditions

State Administrative Complaint Procedures: HAVA requires that states establish a procedure for voters to lodge complaints concerning the voting process. Specifically, states receiving HAVA funds must establish administrative procedures so that “...any person who believes that there is a violation of any provision of title III (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.” See Section 402 of HAVA for a complete list of requirements for these procedures.

Match Requirements: Match requirements are described in the Notice of Availability of Funds, the Additional Terms in the Terms and Conditions, and the Notice of Grant Award. Specific amounts will be indicated along with timelines for identifying allowable match. State and local funds used for match must be different from funds used to meet matching requirements on any other HAVA or other federal grant.

HAVA Section 253 Part (b) and SEC. 254 State Plan Requirement: HAVA outlines performance-based requirements per the “State Plan”, as defined in detail within Section 254 of HAVA, as provided in the following excerpt.

- (a) IN GENERAL. —The State plan shall contain a description of each of the following: (1) How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(a)(2), to carry out other activities to improve the administration of elections. H. R. 3295—30

Additional details may be found here: <https://www.congress.gov/107/plaws/publ252/PLAW-107publ252.pdf>

Record Retention: The grant record retention period for each grant payment starts on the day the grantee submits its *final* Federal Financial expenditure Report (FFR) or if an interim closeout, on the day designated in the interim closeout letter from the EAC

The length of the retention period:

- (1) Except as otherwise provided, records must be retained for three years from the record retention starting date specified in the paragraph above.
- (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

Indirect Cost Rate Agreements and Approval: If a grantee intends to claim indirect costs under the grant, the grantee must submit an indirect cost rate proposal to EAC (if not previously negotiated, authorized, and current). EAC will work with the indirect cost unit at the Department of Health and Human Services to review and negotiate an agreement with the state. Additional EAC guidance may be provided by contacting grants@eac.gov

Per 2 CFR §200.414 (f): Any non-Federal entity that does not have a current negotiated (including provisional) rate and had never had a negotiated rate, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to justify the 10% de minimis indirect cost rate. As described in § 200.403, costs must be consistently charged as either indirect or direct costs but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

Equipment Disposal: Equipment can be disposed of either collectively as a system or individually as components, as follows:

Items of equipment with a current per unit fair market value in excess of \$5,000 may be sold with the funds credited to the state/local HAVA election accounts in an amount calculated by multiplying the current market value or proceeds from sale by the HAVA (Federal and Matching Funds) share in the cost of the equipment.

In cases where the titleholder fails to take appropriate disposition actions, the EAC retains the right to direct states to take excess and disposition actions.

States and local jurisdictions can continue to use equipment purchased with HAVA funds for its original purpose for as long as needed, even if the EAC award used to purchase the equipment has been closed. Equipment may also be used for other federally supported activities currently or previously funded by a federal agency. Additionally, equipment can be traded-in for replacement equipment for the same purposes.

Without prior approval from the EAC, equipment purchased with HAVA funds with a current per unit fair market value of less than \$5,000, may be traded-in, sold or scrapped on an as needed basis with no further obligation to the EAC beyond recording disposition in the appropriate equipment inventory log.

The final record retention period for equipment replacement or disposition begins on the date the State submits its final Federal Financial Report (FFR) to the EAC and continues for three years. For equipment replacement or disposal after the end of award period, the three-year record retention period begins from the time the equipment is traded-in or disposed of and continues for three additional years.

Additional resources and practices outlining disposition of sensitive equipment will be provided by the EAC on an ongoing basis.

Special Note for Safe Dispensation: States and local jurisdictions should take care to follow state equipment disposal policies and any additional guidelines for disposition of sensitive equipment such as cleansing of electronic devices, etc.

4. Additional Attachments or Terms

- The Consolidated Appropriations Act of FY22 and FY23 provide “That States shall submit quarterly financial reports and annual progress reports.” Beginning in January 2023, grantees who have accepted FY22 and FY23 Election Security awards must provide financial reporting on a quarterly basis and programmatic reporting on an annual basis.
- Grantees must submit the required documents to GrantSolutions included in the HAVA Election Security Grant Award Packet by the deadlines stipulated in order to receive funding.
- Grantees must resolve any outstanding compliance requirements for previously awarded HAVA grants.
- Grantees must make available the required 20% match of the federal funds within 2 years of disbursement of the funds, which is to be documented on the FFR and PPR submissions.

The undersigned certifies, to the best of his or her knowledge and belief, that they will abide by the EAC’s Terms and Conditions outlined above, including the referenced requirements to other applicable regulations, provisions, policies and procedures. And that they are aware that any false, fictitious, or fraudulent information may subject me to criminal, civil or administrative penalties. (U.S. Code, Title 18, section 1001).

Michael Howe

Printed Name

Secretary of State

Title

North Dakota Secretary of State

Organization

A handwritten signature in cursive script that reads "Michael Howe". The signature is written in black ink and is positioned above a horizontal line.

Signature

Date