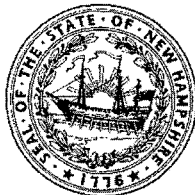


NEW HAMPSHIRE
DEPARTMENT OF STATE

William M. Gardner
Secretary of State



Robert P. Ambrose
Senior Deputy Secretary of State

David M. Scanlan
Deputy Secretary of State

Patricia D. Piecuch
Elections Director

February 19, 2020

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

Dear Ms. Harrington:

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 # NH20101001 (CFDA # 90.404), 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.

We are requesting the amount of \$3,472,912 at this time. We will develop the program narrative by completing the Program Narrative and Budget by April 27, 2020, and will update it as appropriate.

If you have any questions about this request, please contact Patricia Piecuch at (603) 271-8238 or patricia.piecuch@sos.nh.gov.

Sincerely,

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

William M. Gardner
Secretary of State

cc: Peg Rosenberry, Payments and Grants Consultant, EAC

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

NEW HAMPSHIRE
DEPARTMENT OF STATE

William M. Gardner
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Patricia D. Picuch
Elections Director

February 19, 2020

Ms. Mona Harrington
Acting Executive Director
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

Dear Ms. Harrington,

I look forward to receiving the payments adopted in the Consolidated (Omnibus) Appropriations Act of 2020.

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 the Consolidated (Omnibus) Appropriations Act of 2020.

- 1) The Consolidated Appropriations Act of 2020 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

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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, payments under the Consolidated (Omnibus) Appropriations Act of 2020 are "no-year money."

- 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). To my knowledge, the Election Assistance Commission has not adopted regulations, except those related to the National Voter Registration Act. 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,

A handwritten signature in black ink that reads "Mark A. Robbins".

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

Standard Certifications

Certification Regarding Lobbying 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.

Certification Regarding 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;
 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

William M. Gardner
Printed Name

Secretary of State
Title

NH Department of State
Organization

Wm Gardner
Signature

2/19/2020
Date