



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

FINAL REPORT

**PURCHASE OF SHIRTS AND SWEATSHIRTS USING
APPROPRIATED FUNDS**

**EVALUATION REPORT No.
I-EV-EAC-01-09**

OCTOBER 2009

U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL



HIGHLIGHTS

EVALUATION REPORT NO.
I-EV-EAC-01-09

SUBJECT

We evaluated the U.S. Election Assistance Commission's (Commission) purchase of shirts and zip-hooded sweatshirts (shirts) as an award to its employees using appropriated funds because of concerns regarding the appropriateness.

Our evaluation objectives were to determine whether (1) the purchase of the shirts complied with federal requirements and other guidance, and (2) the use of appropriated funds was permissible.

RECOMMENDATIONS AND COMMISSION RESPONSE

We made a number of recommendations based on our observations to improve the Commission's incentive awards program and the use of funds to purchase award items. The steps taken by the Commission in response to this report will strengthen its award program.

OCTOBER 2009

EVALUATION REPORT

PURCHASE OF SHIRTS AND SWEATSHIRTS USING APPROPRIATED FUNDS

RESULTS IN BRIEF

Under the Government Employees' Incentive Awards Act, agencies have the authority to provide monetary and nonmonetary awards to its employees for acts and services related to their official employment and to incur necessary expenses in connection with the awards.

Using \$6,976.50 of FY 2008 funds, the Commission purchased 458 shirts and zip-hooded sweatshirts (shirts) as awards to staff scheduled to work an extended shift on Election Day and to foster improved morale among employees. The Commission distributed 195 shirts to 39 individuals (38 EAC employees and one contractor). Each person received a set of five shirts (three short-sleeved polo shirts, one long-sleeved polo shirt, and one zip-hooded sweatshirt) with a weighted average cost¹ of \$81 per set. The total cost of shirts distributed to employees and a contractor was \$3,159. There are 263 shirts, with an estimated value of \$3,817.50, remaining in inventory.

The Commission has policies and procedures that allow for nonmonetary awards to recognize its employees. In addition, the purchase of shirts generally complied with simple acquisition procedures as outlined by the Federal Acquisition Regulations. However, despite the fact that the purchase complied with the award and procurement provisions, it was excessive and created an appearance of misuse of federal funds. We observed that the Commission should address procurement and award program issues concerning (1) the quantity of items purchased, (2) the quantity awarded, and (3) the distribution of shirts to a contractor.

¹ Weighted average cost was used to account for differences in cost due to shirt size, type, and other related costs (digitizing, shipping and handling).



U.S. ELECTION ASSISTANCE COMMISSION
Office of Inspector General

October 1, 2009

TO: Thomas Wilkey
Executive Director

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

SUBJECT: Final Report - Evaluation of the U.S. Election Assistance Commission's Purchase of Shirts and Sweatshirts Using Appropriated Funds (Assignment No. I-EV-EAC-01-09)

This memorandum transmits the report in connection with the evaluation of the U.S. Election Assistance Commission's (EAC) purchase of shirts and sweatshirts using Fiscal Year 2008 funds. Although, the Commission has policies and procedures that allow for an award of nominal value to recognize its employees and the purchase of the 458 shirts generally complied with simple acquisition procedures, the Commission's purchase was excessive and created an appearance of the misuse of federal funds. We observed that the Commission should address procurement and awards program issues concerning (1) the quantity of items purchased, (2) the number of shirts awarded, and (3) the appropriateness of the award recipient.

In its August 25, 2009 response to the draft report (Appendix 1) the EAC identified steps that it was taking to strengthen its award program. In a supplemental response dated September 30, 2009, (Appendix 2) the EAC provided its justification for providing the shirts to a contractor. Based on the EAC's response the OIG considers all of the recommendations closed.

The legislation as amended, creating the Office of Inspector General (5 U.S.C. § App. 3) requires semiannual reporting to Congress on all inspection and evaluation reports issued, actions taken to implement recommendations, and recommendations that have been implemented. Therefore, a summary of this report will be included in our next semiannual report to Congress.

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

cc: Chair, U.S. Election Assistance Commission
Commissioner Davidson
Commissioner Hillman

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INTRODUCTION

The U.S. Election Assistance Commission (EAC or Commission) was created by the Help America Vote Act of 2002 (HAVA) to assist states² with improving the administration of federal elections and to provide funds to states to implement these improvements. In fiscal year (FY) 2008, the Commission received three appropriations of funds.

- \$16.53 million for salaries and expenses, of which \$3.25 million was for transfer to the National Institute of Standards and Technology, and \$200,000 for a competitive grant program for mock elections;
- \$115 million for distribution under the HAVA requirements payments program; and
- \$10 million to support a competitive grant program for a pilot program for collecting certain data related to the federal general election.

Under the Government Employees' Incentive Awards Act (GEIAA), an agency has the authority to provide monetary and nonmonetary awards to its employees—limited to federal employees—for acts or services related to their official employment. In addition, an agency can incur necessary expenses in connection with an incentive award. In making purchases for its award programs, the Commission is required to procure supplies in such quantities that will result in the total cost and unit cost most advantageous to the government, where practicable, and does not exceed the quantity reasonably expected to be required. (Federal Acquisition Regulations §§ 7.202 and 13.101)

The Commission used \$6,976.50³ in FY 2008 funds to purchase 458 shirts and zip-hooded sweatshirts (shirts) embroidered with “U.S. Election Assistance Commission” as awards to staff scheduled to work an extended shift on Election Day and to foster improved morale among all employees.

- 378 short-sleeved polo shirts in three colors (navy, red, and tan)
- 40 long-sleeved polo shirts
- 40 zip-hooded sweatshirts

On or about November 3, 2008, the Commission distributed 195 shirts to 38 employees and one contractor (a total of 39 persons). Each person received a set of five shirts (three short-sleeved polo shirts, one long-sleeved polo shirt, and one zip-hooded sweatshirt). The weighted average cost of shirts given to each person was \$81,⁴ for a total of \$3,159. There are 263 shirts, with an estimated value of \$3,817.50, remaining in inventory.

² “States” means the 50 states, the District of Columbia, Guam, Puerto Rico, American Samoa, and the U.S. Virgin Islands.

³ The \$6,976.50 includes a \$40 digitizing fee and a \$25 shipping and handling fee.

⁴ See footnote 1.

OBJECTIVES, SCOPE, AND METHODOLOGY

This is the first Office of Inspector General evaluation relating to the U.S. Election Assistance Commission's (Commission or EAC) awards program. The objectives of the evaluation were to determine whether (1) the purchase of the 458 shirts by the Commission complied with federal requirements and other guidance, and (2) the use of appropriated funds was permissible. To achieve our objectives we interviewed Commission management and staff. We requested and examined documentation related to the purchase and award of the shirts. We reviewed applicable federal requirements and other guidance, including the GEIAA and its regulations, the Federal Acquisition Regulations (FAR), and relevant Comptroller General opinions. We also reviewed the EAC's policies and procedures that affected the purchase and award.

We conducted our evaluation from February through April 2009 under the authority of the Inspector General Act of 1978, as amended. The evaluation was conducted in accordance with the "Quality Standards for Inspections," prescribed by the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency.

OBSERVATIONS AND RECOMMENDATIONS

The U.S. Election Assistance Commission (Commission or EAC) purchased 458 shirts and zip-hooded sweatshirts (shirts) for \$6,976.50. The Commission justified the purchase as an award to EAC employees who worked extended or irregular hours on Election Day. We considered two questions during our evaluation: (1) did the EAC use federal funds consistent with federal statutes, regulations and guidelines; and (2) did the EAC's purchase create an appearance of the improper use of federal funds. We found that the EAC's purchase was consistent with the provisions for making nonmonetary, incentive awards to federal employees and that the purchase was made in conformance with the FAR. However, we determined that the EAC's purchase and award did create the appearance of the improper use of federal funds in that the quantity purchased and awarded to employees and a contractor was excessive.

THE COMMISSION'S DISTRIBUTION OF SHIRTS WAS AN AWARD UNDER THE GEIAA

The Commission offered as justification for its purchase of 458 shirts that the purchase was made in order to provide employees who worked an extended shift on Election Day with an award for that activity. We tested the justification and found that the shirts could be considered an award under the GEIAA.

Generally speaking, an agency is not permitted to purchase clothing items for its employees. The Government Accountability Office (GAO) considers clothing to be an employee's personal expense and has stated that, "every employee of the government is required to present himself for duty properly attired according to the requirements of his position."⁵ There are several exceptions to this rule. First, an agency may have statutory authorization for the purchase of clothing items. There are three major statutes that permit this type of purchase: 5 U.S.C. § 7903 (Administrative Expenses Act), 5 U.S.C. § 5901 (Federal Employees Uniform Act), and 29 U.S.C. § 668 (Occupational Safety and Health Act). Second, if the piece of clothing is an "out-of-the-ordinary item," it may be purchased by the agency if it meets a two-part test. Third, the GAO has permitted purchases of clothing as employee awards under the GEIAA.

The GEIAA gives specific statutory authority for agencies to use appropriations for the purposes of providing monetary and nonmonetary awards to employees whose actions improve government operation, efficiency or economy.

The head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—

- (1) by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or
- (2) performs a special act or service in the public interest in connection with or related to his official employment.

⁵ 63 Comp. Gen. 245, 246 (1984)

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5 U.S.C. § 4503.

The authority to provide incentive awards is not unlimited, however. Incentive awards are limited to employees of an agency. *Id.*; [5 U.S.C. § 4501](#). Awards cannot be issued to contractors and other non-employees.

Pursuant to regulations promulgated by the Office of Personnel Management (OPM), the award must recognize individual or group achievement that contributes to meeting the organization's goals or improving its efficiency, effectiveness, and economy. [5 C.F.R. § 451.102](#). The basis of such award can be:

- (1) A suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork;
- (2) A special act or service in the public interest in connection with or related to official employment; or
- (3) Performance as reflected in the employee's most recent rating of record.

5 C.F.R. § 451.104(a).

The award must be distributed in accordance with an agency program which provides for documenting the justification for awards that are not based on a rating of record. [5 C.F.R. § 451.103](#).

GAO has rendered many opinions on the propriety of issuing incentive awards to employees. Awards are assessed under the necessary expense doctrine. In addition to the justification by the agency, GAO frequently considers the opinion of OPM in making its determination on the use of federal funds for incentive awards. Decisions are based on the facts of each of the cases presented to GAO.

We reviewed the EAC policies and procedures concerning nonmonetary awards along with the statutory and budgetary authorizations available to EAC. We found that the EAC has no specific statutory authority to purchase clothing for its employees nor do the three major statutes (5 U.S.C. § 7903, 5 U.S.C. § 5901, and 29 U.S.C. § 668) apply. Further, the shirts are not deemed an "out-of-ordinary item," and therefore, the two-part test for purchase of clothing does not apply.

We found that the EAC does have a policy and procedure in place for making nonmonetary, incentive awards to its employees. That policy generally complies with the statutory requirements of the GEIAA and the regulations promulgated by the OPM concerning incentive awards. See Observations 2 and 3 for needed changes to the EAC policy. We found that GAO, although not expressly, has held that the issuance of awards to a group of employees or even all employees in a division is permitted by the GEIAA.⁶ Further, the GAO has allowed the purchase and distribution of clothing items under the

⁶ B-270327, Defense Reutilization and Marketing Services Award Ceremonies (March 12, 1997)

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GEIAA.⁷ Thus, we concluded that the justification provided by the EAC, that shirts were provided to most EAC employees as an award for working extra or extended hours on Election Day, was a permitted nonmonetary award to a group of employees under the GEIAA.

EAC’S USED FAR SIMPLIFIED ACQUISITION PROVISIONS

The EAC used the provisions of the FAR for simplified acquisitions to purchase the shirts in question.⁸ The purchase was for a total of \$6,976.50, which did not exceed the simplified acquisition threshold. The EAC contract file contained sufficient documentation of the procedure used to acquire the shirts.

EAC’S PURCHASE WAS EXCESSIVE IN TERMS OF THE QUANTITY PURCHASED, QUANTITY AWARDED, AND PERSONS TO WHOM THE SHIRTS WERE DISTRIBUTED

As a part of our evaluation, we considered whether EAC’s purchase⁹ and distribution of shirts was reasonable and supported by its justification. We found that the number of shirts purchased and awarded—to include the number of shirts remaining in inventory—was excessive. In addition, we determined that the EAC inappropriately distributed a set of shirts to a person who is not an EAC employee.

The observations below detail our evaluation results, observations, and recommendations for the improvement of EAC’s process for making awards under its incentive awards program.

OBSERVATION 1 – QUANTITY OF ITEMS PURCHASED

The Commission lacked sufficient justification for the need to purchase 458 shirts. EAC spent \$6,976.50 for shirts to be distributed to staff scheduled to work an extended shift on Election Day and to foster improved morale among all employees. Of the 458 shirts purchased, the Commission distributed only 195 shirts to 38 employees and a contractor (a total of 39 persons). There are 263 shirts remaining in inventory with an estimated value of \$3,817.50.

QUANTITY AND JUSTIFICATION

To establish the quantity of shirts to order, Commission employees obtained shirt sizes from about 34 staff, including one contractor. One employee and the Office of Inspector General did not provide shirts sizes. The contracting officer received a written request from the chief operating officer to order two short-sleeved shirts per employee, and 24 extras

⁷ B-243025, Federal Aviation Administration – Incentive Awards Program – Presentation of Jackets (May 2, 1991)

⁸ FAR, Part 13.

⁹ Includes the quantity of shirts purchased.

OBSERVATIONS AND RECOMMENDATIONS

(varied by size), for a total of 90 shirts. Notations made to the instructions adjusted the number of shirts per employee to three, resulting in 126 shirts.

Short-Sleeved Polo Shirts

	Staff	Extras	Quantity
SM	7 x 3	+ 4	25
MED	15 x 3	+ 4	49
LG	2 x 3	+ 8	10
XL	5 x 3	+ 4	19
2XL	4 x 3	+ 3	16
3XL	1 x 3	+ 1	7
	34	102	24
			126

The contracting officer ordered 378 short-sleeved shirts or 126 in each color (navy, red, and tan) from the selected vendor. The procurement file did not contain justification for the need to increase the number of shirts for each employee to three or for tripling the order quantity. The 126 shirts alone would have provided a short-sleeved shirt in each color for the 34 staff that provided shirt sizes, with 24 extra to accommodate size exchanges or staff that did not provide a shirt size prior to order placement.

In addition to the 378 short-sleeved shirts, the order included 40 long-sleeved polo shirts and 40 zip-hooded sweatshirts. The chief operating officer’s request did not contain instructions to order nor did the purchase file contain justification for the need to purchase the long-sleeved shirts and sweatshirts for each employee. Notations made to the instructions, along with notations on a separate sheet, indicated the order quantities.

The EAC explained that the quantity ordered was based on what could be purchased for under \$100, the amount in place for a nonmonetary token award.¹⁰ When asked about the remaining inventory, the EAC explained that they are for distribution to new employees as an incentive, to others working for the Commission (e.g., contractors), and to promote the Commission at engagements (e.g., conferences, workshops). Neither the executive director’s authorization for the purchase nor the written request from the chief operating officer for order quantities justified the need for an inventory of shirts.

¹⁰ The Commission’s established policies and procedures allow for an award of nominal value (in increments of \$50, with a maximum amount at any one time of \$150. The Commission’s pending employee recognition policy limits the expenditure for nonmonetary awards to no more than \$250 on any one item.

OBSERVATIONS AND RECOMMENDATIONS

CRITERIA

In making purchases, agencies are permitted to buy a quantity reasonably expected to be required by the agency (FAR §§ 7.202 and 13.101) and for which a bona fide need can be established for the fiscal year in which the items are purchased.¹¹

CONCLUSION

The 458 shirts purchased using appropriated funds by the Commission for staff scheduled to work an extended shift on Election Day and to foster improved morale among all employees lacked sufficient justification. The documents contained in the procurement file did not support the purchase of 458 shirts. Furthermore, there was no justifying documentation for an inventory of 263 shirts. Though it is permissible to maintain an inventory of items for award purposes, it is not permissible to use the inventory as an incentive award to new employees or contractors working for the Commission. Without a clearly established need or requirement, the purchase of 458 shirts creates a perception of waste, that federal funds have been expended in a manner that does not further the mission and goals of the Commission.

The Commission should exercise due care in selecting and procuring appropriate items for nonmonetary awards and the quantity thereof.

RECOMMENDATIONS

We recommend that the U.S. Election Assistance Commission:

1. Ensure justifications for the purchase of items relating to the awards program are supported and documented.
2. Ensure the purchase of items for nonmonetary awards is reasonably necessary to carry out an authorized function or will contribute materially to the effective accomplishment of that function.

¹¹ The appropriate use of federal funds depends on: (1) whether the purpose of the obligation or expenditure is authorized; (2) whether the obligation occurs within the time limits applicable to the appropriation; and (3) whether the agency has sufficient funds to satisfy the obligation. The second element, timing of the obligation, depends upon the agency's ability to establish a "bona fide need" for the good or service. The "bona fide needs rule" is a fundamental principle of appropriations law. "A fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year for which the appropriation was made." GAO-04-261SP Appropriations Law, Vol. 1, p. 5-11. When assessing "bona fide need," GAO has recognized the need to maintain a certain inventory of goods. Thus, an agency is not prevented from "...maintaining a legitimate inventory at reasonable and historical levels, the 'need' being to maintain the inventory level so as to avoid disruption of operations. The problem arises when the inventory crosses the line from reasonable to excessive." GAO-04-261SP Appropriations Law, Vol. 1, p. 5-13.

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3. Implement a quantity check of items prior to placing an order to avoid the purchase of excess items.
4. Establish limits to the quantity of items that can be retained in inventory for award purposes.

EAC's Response

The EAC generally concurs with Recommendations 1, 3 and 4. The EAC will ensure that justifications for the purchase of future awards are supported and documented and that a quantity check will be performed prior to the order being placed.

OIG's Response

The actions taken by the EAC are consistent with the intent of the recommendations. No further response to the OIG is required for these recommendations.

OBSERVATION 2 – QUANTITY OF SHIRTS AWARDED

On or about November 3, 2008, 38 employees and a contractor (a total of 39 persons) received a set of five shirts—three short-sleeved polo shirts, a long-sleeved polo shirt, and a zip-hooded sweatshirt. The weighted average cost per set of five shirts was \$81.¹² The total cost of shirts actually distributed was \$3,159. A nonmonetary award of five shirts to each employee and a contractor is excessive and creates the appearance that federal funds were misused. Furthermore, the fact that the award was distributed prior to the activity (working on Election Day) to be rewarded is inconsistent with the OPM regulations governing incentive awards.

DETERMINATION AND APPROPRIATENESS

The Commission's established policies and procedures allow for an award of a nominal value (in increments of \$50, with a maximum amount at any one time of \$150) recognizing employees for a one-time, short-term effort that results in service of exceptionally high quality or quantity. The Commission's pending employee recognition program specifically addresses nonmonetary extra effort awards, for use in recognizing an employee or private citizen for a specific outstanding accomplishment. This nonmonetary award can take the form of a memento, such as a token item, or an honorable mention in an employee newsletter. The Commission limits the expenditure for nonmonetary awards to no more than \$250 on any one item, reserving the higher amounts for high-level honorary awards or major accomplishments.

¹² See footnote 1.

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According to the EAC, the quantity of shirts ordered for the nonmonetary award was based on what the EAC could purchase for under \$100. Cost estimates were used to determine the quantity to order per person. There was no additional justification for the purchase of multiple shirts to reward employees. Justifications for purchasing multiple shirts as an award to Commission staff and a contractor were inadequate.

Further, the purpose of the shirts—a nonmonetary award—was not presented at the time the shirt sizes were obtained or at the time the shirts were distributed to the 39 recipients. The recipients were surprised to receive a set of five shirts as opposed to one shirt.

CRITERIA

Under the GEIAA, an agency has the authority to use appropriations for the purpose of providing monetary and nonmonetary awards to its employees for acts or services related to their official employment. An award to a federal employee can take many forms, for example, an informal recognition or nonmonetary award. An agency can grant the award to a federal employee, as an individual or member of a group. However, an employee cannot receive an award prospectively, that is before the act or service is performed. An agency is required to distribute the award in accordance with its program and to document the justification for awards that are not based on a rating of record.

GAO opinions on the use of federal funds for purposes of giving incentive-based awards to employees approve of the use of nonmonetary awards for individuals and groups. However, the facts of the opinions do not support giving multiple items to the employee and have not considered nonmonetary awards valued at more than \$50 each.¹³

CONCLUSION

The award of five shirts to each employee and a contractor is excessive and creates an appearance issue with the use of federal funds by the Commission for the otherwise permissible purpose of awarding employee behavior. The only support offered by the EAC for giving multiple shirts

¹³ See B-243025, Federal Aviation Administration – Incentive Awards Program – Presentation of Jackets (May 2, 1991); B-160464, Ruth L. Jerideau, United States Department of Agriculture, February 9, 1967; B-184306, Use of U.S. Army Criminal Investigation Command (USACIC) appropriate funds for purchase of marble paperweights and walnut plaques; B-271511, National Security Agency – Availability of Appropriations To Purchase Food as a Nonmonetary Award Under the Government Employees Incentive Award Act (March 4, 1997); B-227559, Awards – Telephones – Nonuse of Sick Leave (March 23, 1988); B-256399, (June 27, 1994); B-270327, Defense Reutilization and Marketing Services Award Ceremonies (March 12, 1997).

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to each employee was to give them something valued under \$100. There was no explanation, in accordance with the Commission's existing policies to justify this level of award to each of the employees. An agency should not grant an award based on the quantity that can be purchased for a given dollar amount. Even though an item is inexpensive, it does not mean that it is appropriate.

An award may not be presented in advance or in anticipation of a contribution that has yet to occur, such as scheduling to work extended hours. Distribution of the shirts before Election Day creates the appearance that the shirts were a gift and not an award.

RECOMMENDATIONS

We recommend that the U.S. Election Assistance Commission:

1. Consider the reasonableness and appropriateness of a nonmonetary award before making it. Determine whether the item being awarded would cause embarrassment to the Commission if made public or whether it creates an appearance issue with the use of federal funds.
2. Ensure procurement and award documentation clearly supports the justification for the item—the quantity and value thereof—being granted as a nonmonetary award.
3. Ensure awards are granted for efforts expended or results achieved, and not presented in advance or in anticipation of a contribution that has yet to occur.
4. Revise the pending policy on incentive awards to require distribution of awards only after the notable action.
5. Inform employees that they are being awarded and what efforts expended or results achieved as an individual, or member of a group initiated the award.

EAC's Response

In its response the EAC indicated that it considered the reasonableness and appropriateness of the monetary award before making it. The EAC concluded that the shirts were appropriate to recognize the employees with a nonmonetary award. The response also indicated that “[t]he notion that the shirts would cause any level of embarrassment to the Commission is unfounded.” The response further stated that “the Commission’s incentive award program is designed to recognize past performance and to encourage exemplary performance by the staff.”

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OIG's Response

The actions taken by the EAC are consistent with the intent of the recommendations. No further response to the OIG is required for these recommendations. However, the EAC should be cognizant of the appearance of such employee awards to the general public and to Congress. The OIG believes that awarding 5 shirts to each employee is excessive. An opinion apparently shared by at least one member of the EAC's oversight committee in the U.S. House of Representatives. The Member offered an amendment to the EAC's FY 2010 appropriation to reduce the appropriation by \$6,951. The explanation of the amendment stated that it "[w]ould reduce the amount appropriated for salaries and expenses of the Election Assistance Commission by \$6,951, the amount used to purchase t-shirts and sweatshirts for agency employees."

The EAC response stated that the "award program is designed to recognize past performance and to encourage exemplary performance by the staff." However, the justification offered by the EAC indicated that the awards were made in order to recognize employees who worked an extended shift on Election Day. The shirts were distributed on or about November 3, 2008, prior to Election Day. If the shirts were given for past performance, the award justification should clearly identify what past performance was being awarded.

OBSERVATION 3 – APPROPRIATENESS OF THE AWARD RECIPIENT

The Commission inappropriately awarded a set of five shirts as a nonmonetary award to a contractor. As a result, the Commission is susceptible to claims of unfair advantage when appropriated funds not considered in the competitive process are used to purchase an award for contract personnel. Further, the Commission's pending award policies and procedures permit nonmonetary awards to private citizens. Such policy is not consistent with the GEIAA or its implementing regulations.

NONMONETARY AWARD

A contractor received a set of five shirts from the Commission on or about November 3, 2008. The contractor was scheduled to work extended hours on Election Day. A Commission employee asked for the contractor's shirt size. The purpose of the shirts—a nonmonetary award—was not disclosed at the time the contractor's shirt size was obtained or at the time the shirts were delivered. Further, the contractor was surprised to receive five shirts as opposed to one shirt.

OBSERVATIONS AND RECOMMENDATIONS

CRITERIA

Under GEIAA, an agency is permitted to provide monetary and nonmonetary awards to its employees; however, the Act limits the awards to federal employees. The term “federal employees” does not include contractor personnel or private citizens. Further, there is no statutory authority for spending appropriated funds on awards—whether monetary or nonmonetary—for contractor personnel.

CONCLUSION

The Commission inappropriately awarded a contractor with a set of five shirts. Further, the Commission’s pending award policies and procedures are inconsistent with the GEIAA and OPM regulations in that they allow awards to private citizens and contractors.

RECOMMENDATIONS

We recommend that the U.S. Election Assistance Commission:

1. Seek payment for the shirts from the contractor or the employee(s) responsible for the purchase and award.
2. Amend its awards policies and procedures to comply with federal requirements by prohibiting awards to contractor personnel or private citizens. Advise Commission management and staff of the amendment to ensure awareness and compliance.

EAC’s Response

In its response, the EAC offered a new justification for giving shirts as an award to a contractor, stating that the contractor was a former Federal employee and that the award was for past service as a Federal employee. In its supplemental response dated September 30, 2009, the EAC determined that recognizing the former federal employee/contractor with a non-monetary award was appropriate. The response indicated that former employee/contractor was eligible for a nonmonetary award based on the fact that the contributions made by the individual as a federal government employee were substantial and benefited the agency’s overall mission.


OIG’s Response

No further response to the OIG is required for these recommendations.



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

TO: Curtis Crider
 Inspector General

FROM:  Thomas A. Wilkey
 Executive Director

DATE: August 25, 2009

SUBJECT: Management Response to Draft Report-Evaluation of the U.S. Election Assistance Commission's Purchase of Shirts and Sweatshirts Using Appropriated Funds (Assignment No. 1-EV-EAC-01-09)

In a Final Report entitled "Purchase of Shirts and Sweatshirts using Appropriated Funds" the Inspector General (IG) finds that "...The Commission has policies and procedures that allow for nonmonetary awards to recognize employees...that the shirts could be considered a nonmonetary award under the GEIAA...that the purchase was made in conformance with the FAR... and that the justification provided by the EAC, that shirts were provided to most EAC employees as an award for working extra or extended hours on Election Day, was a permitted nonmonetary award to a group of employees under the GEIAA.

These conclusions follow the IG's April 1, 2009 testimony before the House Committee on House Administration, Elections Subcommittee, that he had not found any illegal use or abuse of federal funds at the EAC. The IG's findings are generally consistent with the EAC's position on the purchase of the items.

The report, however, maintains "...that the number of shirts purchased and awarded, to include the number of shirts remaining in inventory, was excessive. Management respectfully disagrees with this finding and states in response to this allegation that it is their position that the purchase and distribution of the shirts was not excessive and was provided to the staff as a means of recognition, to help improve morale among all employees, and in light of the following.

First it should be noted that the remaining inventory of shirts will be used for future nonmonetary awards. The EAC employs student interns, technical reviewers, as well as other part-time/temporary employees on a regular basis. The shirts are used as a nonmonetary award in recognition for their work while employed with the EAC. These individuals are generally hired by the EAC to work on very important short term projects. Given the time span that many of the interns are working with the agency and the short turn around that their projects are assigned and due for completion, the remaining inventory of shirts are a way of awarding them for their accomplishments, if so deserved.

Second, when the distribution of the shirts are considered in the context of the amount of performance awards, monetary and nonmonetary, given to employees of the EAC over the last four years, it was not materially excessive. As the IG points out, the sets of shirts distributed had a value of \$81 per set. This was part of a total budget for performance awards for FY 2008 that \$82,956 or 2.3% of the total salary and expense budget. In 2005 - 2007 less than \$5,000 was expended on performance awards, which is considerably below the amount spent in general in the federal government. EAC employees are exceptionally hard-working and have worked vigorously over the last few years to put the Commission on track to being a high performing, effective federal entity. Management believes that the award of the shirts was an appropriate means of acknowledgment for the performance of the agency staff in appreciation and recognition of their performance in preparation for the major 2008 Presidential election cycle, which began well before Election Day. The election cycle commences months before the date of the election. Efforts that lead to any successful election are materialized well in advance. While maybe not effectively communicated during the IG's investigation, the shirts were awarded, not only for their expected election day performance, but also in recognition of and with gratitude for the past efforts that the staff had consistently, readily, and eagerly exhibited leading up to the November 4th election.

OBSERVATION 1 Quantity of Shirts Purchased

Response:

With regard to the specific recommendations under Observation 1 made by the IG, the Commission generally concurs with the conclusions made in Recommendations 1 and 3. To this extent the Commission will continue to ensure that justifications for purchases of awards are supported and documented, and that a quantity check of items prior to an order being placed is conducted to avoid the appearance of excess purchases.

Recommendation 2 suggest that the Commission "...ensure the purchase of nonmonetary awards is reasonably necessary to carry out an authorized

function...”. This recommendation implies that nonmonetary awards are solely to encourage future work. The Commission’s incentive award program is designed to recognize both employees’ past performance as well as to encourage continuous exemplary accomplishments by employees. This is a practice the Commission intends to continue.

Recommendation 4 advises the Commission to “establish limits to the quantity of items that can be retained in inventory for award purposes” . The Commission generally supports this recommendation however, it is important to note that at the time the shirts were ordered, there was not a Budget Director or Chief Financial Officer (CFO) in place. The Contracting Officer operated independently with respect to the final order. It should be recognized that since this time financial controls have been put in place to ensure that the award documents which are provided to the General Services Administration (GSA) are in line with the original request. With the oversight of the CFO, the Commission’s review of requests for goods and services, including the purchase of nonmonetary awards ensures that the appearance of excessive purchases is not an issue in the future. This process was in place in Q1 FY’09 under the oversight of the Budget Director and subsequently in Q2, the CFO Division continues to monitor and oversee this process.

OBSERVATION 2 Quantity of Shirts Awarded

Response:

Recommendation 1. The Commission considered the reasonableness and appropriateness of the nonmonetary award before making it. The Commission concluded that the shirts were appropriate to recognize the employees with a nonmonetary award. Further the Commission concluded that the shirts would allow staff to proudly wear them in the office, in public and during EAC meetings, events and activities. The notion that the shirts would cause any level of embarrassment to the Commission is unfounded. The shirts, similar to those purchased by other federal government agencies, prominently displayed the name of the agency, are durable, in good taste, and can be worn by staff in any setting such as meetings and professional conferences, with pride. See also response to Observation 1, Recommendation 4.

Recommendation 2: The Commission concurs with this Recommendation. See also response to Observation 1, Recommendation 4.

Recommendation 3: See Response to Observation 1, Recommendation 2.

Recommendation 4: This recommendation appears to counter Observation 1 Recommendation 2. However, as indicated in response to Observation 1 Recommendation 2, the Commission’s incentive award program is designed to

recognize past performance and to encourage continuous exemplary performance by the staff.

Recommendation 5: The Commission concurs with this Recommendation. The Commission will be mindful of ensuring that the staff is made aware of the reason for any nonmonetary award which may be given to them.

OBSERVATION 3: Appropriateness of the Award Recipient

Response:

With regard to Observation Number 3 related to the appropriateness of the award for a contract employee, the Commission concurs that nonmonetary awards to private citizens is not allowable with appropriated funds. The one contract employee that received the shirts was a prior federal government employee, who was detailed to the EAC and served in the capacity as the Inspector General from August 2006 until April 2007. This individual retired from federal service in April 2007, and did not receive any recognition award for his significant contributions at that time. An award under these circumstances in recognition for service related to official employment may be allowable (55 Comp. Gen. 346 (1975). See (B-243025, May 2, 1991). As to the 'surprise' of said individual at receiving multiple shirts, that individual was free to reject the nonmonetary award and is free to return any unworn shirts to the EAC. Further in most instances, an award is given as a means to "surprise" its recipients. It is also important to note that at the time the shirt size was taken there was no indication to any of the staff as to the number of shirts to be awarded to them. Rather, the request was for employees to provide their shirt sizes because agency shirts were being ordered. Nonmonetary awards are given as a means of recognizing employees for sustained superior performance and at times, may, appropriately amaze, or surprise the recipients.

Given the recommendations under this section the EAC will first ascertain whether this award was appropriate as recognition for the immediate past service of a federal employee. If it is determined that the award was not allowable, the Commission will ask the former federal employee to return any unworn shirts to the EAC or provide the Commission with a reimbursement check in the amount of \$81.00, the cost of the nonmonetary award.

The Executive Director will make the final determination on this issue and will, if deemed appropriate, contact the former IG/contractor, for the proper resolution. This will be finalized no later than the end of the Q4, FY'09.



U. S. ELECTION ASSISTANCE COMMISSION
 OFFICE OF THE EXECUTIVE DIRECTOR
 1225 New York Avenue, NW, Suite 1100
 Washington, DC. 20005

TO: Curtis Crider
 Inspector General

FROM: Thomas A. Wilkey 
 Executive Director

DATE: September 30, 2009

SUBJECT: Management Response to Observation 3: Appropriateness of the Award Recipient from Draft Report - Evaluation of the U.S. Election Assistance Commission's Purchase of Shirts and Sweatshirts Using Appropriated Funds (Assignment No. 1-EV-EAC-01-09).

On July 29, 2009, the Inspector General (IG) transmitted to Management a report in connection with the evaluation of the U.S. Election Assistance Commission's (EAC) purchase of shirts and sweatshirts using appropriated funds. Management provided a response to the report on August 25, 2009. In its response, Management indicated that further review would be given with respect to the finding in Observation 3 of the IG's report and that a final determination of the issue would be made no later than the end of Q4, FY'09. This provides Management's final review and response of the issues raised in Observation 3.

In the evaluation report the IG found that "...the Commission has inappropriately awarded a contractor with a set of five shirts". Based on this finding the IG recommended that the EAC "Seek payment for the shirts from the contractor or the employee(s) responsible for the purchase award" (approx. \$81.00). The report, citing a provision in the Government Employees Incentives Award Act (GEIAA), concluded that "an agency is permitted to provide monetary and nonmonetary awards to its employees; however the Act limits the awards to federal employees. Based on the IG's findings the term "federal employees" does not include contractor personnel or private citizens. Further, there is no statutory authority for spending appropriated funds on awards-- whether monetary or nonmonetary -- for contractor personnel, according to the conclusions reached in the report.

Management respectfully disagrees with this finding for the following reasons. 5 CFR Part III; Subpart C, 5 USC Sec. 4505 provides that an agency may pay or grant an award under this subchapter notwithstanding the ...separation from the service of the employee concerned, if the ... superior accomplishment, other personal effort, or special act...for which the award is proposed was made or performed while the employee was in the employ of the Government.

During the period of August 2005 until April 2007, the contract employee in question, was a former federal employee, who was detailed to the EAC and served in the capacity of Inspector General. “The Memorandum of Understanding” between EAC, and the Department of Interior Office of Inspector General dated September, 8, 2005 authorized said individual to receive “salary, benefits, bonuses, awards, and related personnel cost associated with the work performed while employed at EAC.”

At the onset of the individuals’ detail assignment as the Inspector General, the EAC was faced with many challenges as a newly formed Federal Agency. The former employee provided substantive input and guidance to the agency. Given the many years of federal government experience that the individual possessed, the advice and recommendations that the former employee provided to the EAC management was essential.

The individual retired from federal employment in April 2007 and did not receive any recognition award for the service that was performed and the substantive contributions that were made to the agency.

Beginning in June 2007 through July 2009 the former employee continued to serve the EAC as a contract employee. At the time of the former employee’s transition to a contract status and, based on the EAC’s recollection, at the verbal request of the EAC’s newly appointed IG, the individual received an agency issued laptop, blackberry, and building key card. The former employee/contractor, also at the request of the IG’s office, was provided ongoing access to the shared drive, (except the IG folder) and maintained the same EAC email address that was assigned to the individual while employed as a federal government employee. Although the employee had officially retired and was serving in a “contract” capacity, the employee’s status, with respect to continued services and access to information, was never modified due in large part to the IG’s request.¹

Once the former federal employee transitioned to the contract status, the employee continued to contribute to the agency in a number of critical ways including: assisting in the initial development of the agency’s internal policy and procedure manual, assisting with the resolution of HAVA audits, and responding to IG and Congressional inquiries.

The EAC’s policy is consistent with the policies of other federal government agencies.

The United States Department of Agriculture (USDA) provides in their Employee Recognition Program that all USDA employees are eligible for recognition. This includes all full-time, part-time and seasonal employees, regardless of appointment type. In addition, former employees whose contribution occurred when they were employed with USDA and private citizens who contributed to the mission of USDA or the Federal government as a whole are eligible to receive recognition. The USDA determined that the Department policy limits the expenditure to no more than \$250. This award was classified and determined to be measured as small/moderate and limited to benefits that impact the public interest, or a specific small work unit including a division or region.

¹ In discussion with the Inspector General, his recollection differs from that of the Division Director who oversees such matters. We have agreed to disagree on this matter.

The National Institute of Health (NIH) has authorized that all NIH employees, including former employees, were eligible for awards for contributions in their Employee Awards Program. These contributions included informal non-monetary gifts issued in recognition to individuals or groups for their efforts in the form of nominal values of \$100 such as mugs, hats, T-shirts, tote-bags, etc.

Based on this analysis, it is determined that the performance of the former federal government employee/contractor improved government operations at the EAC and therefore the award was proper. The former employee/contractor was eligible for a nonmonetary award based on the fact that the contributions made by the individual as a federal government employee were substantial and benefited the agency's overall mission. The performance was related to official employment while at the EAC and continued into exemplary service as a contractor.

The determination is therefore made that the former employee/contractor contributed to the efficiency, improvement and effectiveness of the organization. The individual's exemplary performance had a direct impact on the mission and goal of the agency and results were achieved.

Taking the totality of the facts into consideration as indicated herein, Management concludes that recognizing the former federal employee/contractor with a non-monetary award was not inappropriate.

RECOMMENDATION	Status
OBSERVATION 1: QUANTITY OF ITEMS PURCHASED	
1. Ensure justifications for the purchase of items relating to the awards program are supported and documented.	Closed
2. Ensure the purchase of items for nonmonetary awards is reasonably necessary to carry out an authorized function or will contribute materially to the effective accomplishment of that function.	Closed
3. Implement a quantity check of items prior to placing an order to avoid the purchase of excess items	Closed
4. Establish limits to the quantity of items that can be retained in inventory for award purposes.	Closed
OBSERVATION 2: QUANTITY OF SHIRTS AWARDED	
1. Consider the reasonableness and appropriateness of a nonmonetary award before making it. Determine whether the item being awarded would cause embarrassment to the Commission if made public or whether it creates an appearance issue with the use of federal funds.	Closed
2. Ensure procurement and award documentation clearly supports the justification for the item—the quantity and value thereof—being granted as a nonmonetary award.	Closed
3. Ensure awards are granted for efforts expended or results achieved, and not presented in advance or in anticipation of a contribution that has yet to occur.	Closed
4. Revise the pending policy on incentive awards to require distribution of awards only after the notable action	Closed
5. Inform employees that they are being awarded and what efforts expended or results achieved as an individual, or member of a group initiated the award.	Closed
OBSERVATION 3: APPROPRIATENESS OF AWARD RECIPIENT	
1. Seek payment for the shirts from the contractor or the employee(s) responsible for the purchase and award.	Closed
2. Amend its awards policies and procedures to comply with federal requirements by prohibiting awards to contractor personnel or private citizens. Advise Commission management and staff of the amendment to ensure awareness and compliance.	Closed

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