



EAC MANAGEMENT DECISION:

Resolution of the OIG Audit Report on the Administration of Payments Received Under the Help America Vote Act by the State of Tennessee, for the Period April 23, 2003 Through June 30, 2009, Report No. E-HP-TN-02-09

September 17, 2010

Summary of Decision

Actions necessary for the Tennessee Secretary of State's Division of Elections (SOS-DOE) to resolve the audit finding and implement the recommendations are summarized below:

- (1) Resolve questioned costs for expenditures the counties incurred related to their purchase of voting machine equipment.
- (2) Resolve the appropriate corrective action regarding the lack of periodic certifications for employees who worked on HAVA activities.

BACKGROUND

The EAC is an independent, bipartisan agency created by the Help America Vote Act (HAVA). EAC assists and guides state and local election officials in improving the administration of elections for Federal office. EAC distributes HAVA funds to States for the acquisition of voting systems, and supports the establishment of statewide voter registration lists, and other activities to improve the administration of elections for Federal office. EAC monitors State use of HAVA funds to ensure funds distributed are being used for authorized purposes. To help fulfill this responsibility, the EAC determines the necessary corrective actions to resolve issues identified during Single Audit Act and Department of Inspector General (OIG) audits of state administration of HAVA funds. The EAC OIG has established a regular audit program to review the use of HAVA funds by states. The OIG's audit plan and audit reports can be found at www.eac.gov.

The EAC Audit Follow-up Policy authorizes the EAC Executive Director to issue the management decision for OIG audits of Federal funds to state and local governments, to non-profit and for-profit organizations, and for single audits conducted by state auditors and independent public accountants (external audits). The Executive Director has delegated the evaluation of final audit reports provided by the OIG and single audit reports to the Director of the HAVA Grants Division of EAC. The Division provides a recommended course of action to the Executive Director for resolving questioned costs, administrative deficiencies, and other issues identified during an audit. The EAC Executive Director issues the EAC Management Decision that addresses the findings of the audit and details corrective measures to be taken by the state.

States may appeal the EAC management decisions. The EAC Commissioners serve as the appeal authority. A state has 30 days to appeal the EAC management decision. All appeals must be made in writing to the Chair of the Commission. The Commission will render a decision on the appeal no later than 60 days following receipt of the appeal or, in the case where additional information is needed and requested, 60 days from the date that the information is received from the state. The appeal decision is final and binding.

AUDIT HISTORY

The OIG issued an audit report on the SOS-DOE's administration of payments received under HAVA on April 9, 2010. The report presented one finding pertaining to the procurement process and one finding pertaining to personnel certifications.

In preparing the audit report, the auditors issued Notices of Findings and Recommendations (NFRs) to the SOS-DOE. The SOS-DOE summarized its responses to the NFRs and the associated recommendations as a response to the audit report.

I. PROCUREMENT

Four of the seven counties visited in Tennessee did not use formal solicitation procedures to purchase voting equipment during calendar year 2006. The four counties negotiated contracts totaling \$1,647,097 with vendors authorized by the state election office to sell voting equipment in Tennessee.

The Administrators of Elections at three of the counties believed their Election Commission was exempt from procurement regulations which require competitive bidding procedures. The Purchasing Officer for one of the three counties provided a letter prepared by the County Attorney in which the attorney concluded that, "Neither the Election Statutes or the rules and regulations of the Coordinator require that purchases of electronic voting machines be competitively bid." The administrators at the other two counties were verbally advised by their purchasing offices that the Election Commission was exempt from county purchasing requirements.

The fourth county election administrator thought the state had awarded a statewide contract which established prices for the voting equipment that the county simply had to choose the equipment which it believed was best suited for its local purposes, and then order from the state contract.

Tennessee Division of Elections officials indicated the state certified the voting equipment vendors, but did not award any state-wide contracts. These officials said that they had negotiated voting equipment prices with each of the four vendors and that they reviewed all contracts between the counties and the vendors to assure that the counties were not charged more than the prices negotiated. They also said that under Tennessee state law, the General Assembly, which includes the SOS, is exempt from state procurement regulations. The state law does say, however, that to the extent practicable, the General Assembly should follow the procedures established by the state's Department

of General Services. The grants awarded to the counties permitted each county to select, from authorized vendors, the voting equipment which best suited the counties' needs. The grant agreement also required that procurements subject to the grant shall be made on a competitive basis, including the use of competitive bidding procedures.

The *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (Common Rule) located at 41 CFR 105-71.136(a), and Office of Management and Budget Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, Attachments A and B, provide guidance to grantees when utilizing federal funds to ensure that costs incurred are both reasonable and allowable. The Tennessee Department of General Services Purchasing Rules in effect at the time these purchases were made at Chapter 0690-3-1 "*Purchase of Materials, Supplies, Equipment and Services*," Section .01 (5), *Exempt State Agencies* includes purchasing requirements for certain agencies named in the ruling.

Further, Chapter 0690-3-1, Section .01 under *Methods of Purchasing* discusses procedures for competitive bidding.

The terms of the grant agreement between the State of Tennessee, Department of State, Division of Elections and the various county Election Commissions describe the requirements for competitive bidding when using federal funds.

Three of the administrators believed that they were exempt from these requirements. Moreover, the SOS did not verify that all counties followed applicable procedures in their procurement of voting equipment before reimbursing the counties for the cost of the equipment.

As a result, the SOS reimbursed four counties for a total of \$1,647,097 for expenditures the counties incurred related to their purchase of voting machine equipment, thus the counties may not have obtained the best pricing for the voting equipment.

RECOMMENDATION:

Auditors recommend that the SOS resolve the questioned costs with the Commission.

SOS'S RESPONSE:

The state did not disagree with the finding that four counties did not purchase voting equipment using competitive bidding procedures. The state believes, however, that the process used to purchase voting equipment resulted in prices that were the same whether or not competitive selection procedures were used.

Prior to the award of subgrants to counties for the purchase of voting equipment, the SOS's office negotiated a maximum price with each of the four vendors authorized to sell voting equipment within the state. Documents provided by the SOS show that the prices paid by counties where competition took place were the same as those paid by the

counties which did not engage in competitive bidding. In one instance a county paid less for voting equipment using the state's negotiated price than they had previously paid using their own funds pre-HAVA.

The SOS believes there is ample evidence that the counties could not have obtained a more favorable pricing structure for the purchase of voting equipment had competitive bids been obtained and could have resulted in higher prices for smaller counties.

EAC MANAGEMENT DECISION

EAC reviewed the response by the SOS-ED. The state educated counties about the existence and amount of pre-negotiated maximums established by the state for purchasing voting machines. The state held training seminars to explain the procurement process on several occasions. The pre-negotiated maximums resulted in prices that were uniform with the competitive bids that were received. EAC is in agreement that there is ample evidence that the four counties not obtaining 'competitive bids' would not have obtained a more favorable pricing structure for the purchase of voting equipment had competitive bids been obtained. One of the four purchases was appropriately obtained by sole source in order to be cohesive with current voting system equipment. Further, the state SOS-ED implemented a process of negotiating on a state-wide basis maximum prices for the different equipment vendors to foster greater economy and efficiency by leveraging purchases as a whole within the state rather than leaving smaller counties to negotiate for small quantities. The prices obtained and the comparative analysis by the state demonstrates that the process provided a good basis for determining that the prices were fair and reasonable.

EAC considers this matter closed.

II. PERSONNEL CERTIFICATIONS

The State of Tennessee's Office of the SOS did not complete semi-annual certifications for employees who worked full-time or solely on HAVA activities.

OMB Circular A-87, in Attachment B Section 8(h) (3) requires that:

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

Staff of the SOS indicated they were not aware of this requirement.

As a result, the Commission has no assurance that salaries and fringe benefit costs of \$1,492,446 paid to SOS staff using HAVA program funds were incurred for work done solely on HAVA activities during the audit period.

RECOMMENDATION:

Auditors recommend that the Commission resolve with the Tennessee SOS the appropriate corrective action regarding the lack of periodic certifications.

SOS'S RESPONSE:

The State acknowledged that it had not completed the required certifications for employees who were paid with HAVA funds. The SOS's office said they were unaware of the requirements of OMB Circular A-87. They said that at all times since the inception of the program the employees worked solely on HAVA activities while they have been paid with HAVA funds. They also said that they have developed a semi-annual certification form and that affected employees have completed the form for the first half of this year and those certifications will be prepared and retained by the SOS's office in the future.

EAC MANAGEMENT DECISION:

The EAC has reviewed the SOS-DOE response along with the *Semi-annual Certification of Pay* form that is now being used. All employees paid under the HAVA award spend 100% of their time on HAVA activities. Each employee signs and dates the form for each six month period. An original and an electronic version of the completed form is kept on file in the SOS-DOE offices.

EAC considers this matter closed.