OFFICE OF THE SECRETARY OF STATE

Clear and Appropriate Direction Is Lacking in Its Implementation of the Federal Help America Vote Act

Audit Highlights . . .

Our review of the Office of the Secretary of State's (office) administration of federal Help America Vote Act of 2002 (HAVA) funds revealed the following:

- ☑ ***The office's insufficient planning and poor management practices hampered its efforts to implement HAVA provisions promptly.***
- ☑ ***The office's disregard for proper controls and its poor oversight of staff and consultants led to questionable uses of HAVA funds.***
- ☑ ***The office avoided competitive bidding for many contracts paid with HAVA funds by improperly using a Department of General Services exemption from competitive bidding and by not following the State's procurement policies.***
- ☑ ***The office bypassed the Legislature's spending approval authority when it executed consultant contracts and then charged the associated costs to its HAVA administration account.***

continued on next page . . .

REPORT NUMBER 2004-139, DECEMBER 2004

Office of the Secretary of State response as of December 2004

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits (bureau) review the Office of the Secretary of State's (office) fiscal year 2003–04 budget request and verify that all components of the federal Help America Vote Act of 2002 (HAVA) grants were implemented within the spirit and letter of the law. Specifically, the audit committee asked the bureau to review and evaluate relevant laws, rules, and regulations; to determine whether the office used HAVA funds only for allowable purposes and in accordance with Section 28 of the Budget Act of 2003; and to determine whether the office implemented HAVA in compliance with federal requirements. It also asked the bureau to review and evaluate the office's policies and procedures for administering HAVA funds, including the process of awarding and disbursing those funds, and to determine whether it effectively oversees the use of the funds it awards to ensure that recipients use them only for allowable purposes. The audit revealed the following:

Finding #1: The office's insufficient planning and poor management practices hampered its efforts to implement some HAVA provisions in a timely way.

The office is in danger of failing to meet the deadline for at least one HAVA requirement and other important future implementation milestones because of insufficient planning and other poor management practices. According to its current schedule, it may not fully implement by the January 1, 2006, HAVA deadline a computerized statewide voter registration list that is maintained and administered at the state level. Further, the office could have been more proactive in assisting counties in achieving the successful statewide implementation of other HAVA requirements, such as provisional voting procedures, a free access system, the posting of voter information, and voter identification requirements.

☑ ***The office failed to disburse HAVA funds to counties for the replacement of outdated voting machines within the time frames outlined in its grant application package and county agreements.***

These shortcomings in meeting HAVA deadlines can be traced to the office's incomplete planning for each of the activities it intended to undertake. As a result of this incomplete planning, as of June 30, 2004, the office had spent only $46.6 million of the $81.2 million authorized by the Legislature for fiscal year 2003–04. The lack of implementation plans for various HAVA projects could have been due in part to a lack of project management oversight. According to the office's executive staff, no one individual was assigned the overall responsibility for HAVA implementation. Instead, direction for administering HAVA activities came from many staff in the executive office. Eventually recognizing the need for project management services to implement HAVA successfully, the office solicited proposals from vendors for consulting services in June and then again in October 2004, and gave notice of its intent to award a contract on December 1, 2004.

To ensure that it successfully implements the requirements called for in HAVA, we recommended that the office take the following steps:

- Develop a comprehensive implementation plan that includes all HAVA projects and activities.
- Designate the individuals responsible for coordinating and assuring the overall implementation of the plan.
- Identify and dedicate the resources necessary to carry out the plan and assign roles and responsibilities accordingly.
- Establish timelines and key milestones and monitor to ensure that planned HAVA activities and projects are completed when scheduled and that they meet expectations.

Office Action: Pending.

The office responded that it drafted a preliminary implementation plan that it was in the process of finalizing. It also stated it had identified a member of its HAVA staff who will be supported by the consulting firm and will join a team of managers responsible for implementing all HAVA requirements. Additionally, it stated that it sent to the Department of Finance (Finance) its revised spending plan with details of the proposed distribution of HAVA funds.

Finding #2: The office's disregard for proper controls and its poor oversight of staff and consultants led to questionable uses of HAVA funds.

Because of a lack of proper control and oversight, the office risks having to repay the federal government for costs charged to HAVA funds that either did not have the adequate support or were for questionable activities. The office did not provide many employees with job descriptions that explained their HAVA responsibilities and that could make employees aware of potential conflicts of interest, incompatible activities, and other requirements important in administering federal funds. Moreover, the office's conflict-of-interest code and incompatible activities policy do not prohibit the real or perceived participation in partisan activity by employees or consultants.

Our review of the $1,025,695 in personal service costs the office charged to HAVA funds in fiscal year 2003–04 revealed that the office neither prepared the certifications for its employees that worked full-time on HAVA activities nor instructed its employees to complete monthly time sheets or other activity reports required by federal cost principles to support the personal service costs charged to HAVA funds. Further, two of the five employees we reviewed whose entire salaries were charged to HAVA funds reported attending certain events that did not appear to relate to allowable HAVA activities. Therefore, the office cannot assure that the personal service costs charged to HAVA funds are accurate and allowable.

In addition, the office failed to adequately account for the activities of some consultants it hired to assist in the implementation of HAVA. Of the 169 staff activity reports submitted between December 2003 and September 2004 by the regional outreach consultants it hired, 62 (37 percent) listed one or more activities that had no relationship to HAVA requirements. Some of these consultants reported attending events such as fundraisers and a state delegation meeting for the Democratic National Convention, and indicated they were representing the secretary of state at these events. However, HAVA does not specify these as allowable activities and some appear to be partisan in nature. Although we could not quantify the amounts paid to consultants for these types of activities because the office did not require them to indicate on their invoices the time spent on each one, we question the office's use of HAVA funds to pay for these types of activities.

The office also exercised poor oversight of a law firm's contract to provide legal services relating to HAVA, approving and paying for invoiced services that violated the terms of the contract. The contract stipulated that the law firm's daily charge for services would not exceed $1,200 per day and that the firm would provide services one day a week on an as-needed basis. However, an invoice for payment listed 17 separate days on which the amount the firm charged exceeded the contract's $1,200 per day limit. Moreover, rather than providing services one day a week, the firm billed the office for 22 days in January, 21 days in February, 23 days in March, and five days in the first two weeks of April 2004. Furthermore, the office paid for services rendered before a binding contract was in place, and we found no indication that the former chief counsel reviewed the invoice, even though he was the office's representative for this contract and, therefore, was presumably more familiar with the legal services rendered and the contract's payment terms. Instead, the invoice was reviewed and approved for expedited payment by the chief assistant secretary of state.

In another example of its poor contract oversight, the office hired a consulting firm to perform public outreach within the context of HAVA. The consultant proposed preparing an outreach plan and was asked to identify specific events, people, and opportunities for outreach. Although the office used HAVA funds to pay this consultant $4,750, it was unable to provide us with a plan or any other work products for this contract.

As a result of the failure to provide proper oversight of employees and consultants and the failure to prepare and maintain adequate documents to support the costs charged to HAVA funds, the office is at risk of having the federal government require repayment of some, if not all, of the HAVA funds used to pay for these activities.

To establish or strengthen controls, comply with federal and state laws, and reduce the risk that HAVA funds are spent inappropriately, we recommended that the office take the following actions:

- Develop clear job descriptions for employees working on HAVA activities that include expectations regarding conflicts of interest, incompatible activities, and any other requirements important in administering federal funds.

- Establish and enforce a policy prohibiting partisan activities by employees and consultants hired by the office; periodic staff training and annual certification by all employees that they have read and will comply should be part of this policy.
- Standardize the language used in all consultant contracts to include provisions regarding conflicts of interest and incompatible activities, such as partisan activities.
- Ensure that time charged to HAVA or any other federal program is supported with appropriate documentation, including time sheets and certifications.
- Require that contract managers monitor for the completion of contract services and work products prior to approving invoices for payment.
- Review invoices to assure that charges to be paid with HAVA funds are reasonable and allowable and conform to the terms of the contract.

Office Action: Pending.

The office responded that it communicated, verbally and in writing, the specific roles and responsibilities of staff—including the importance of following appropriate activity and time sheet reporting procedures—and would include in the their final duty statements a clear statement of conflicts of interest, incompatible activities, and other requirements important in administering federal funds. It indicated that it was also collecting model language to develop written rules prohibiting inappropriate partisan activities of employees and consultants, and would establish a program of staff training and annual certification to ensure ongoing compliance. Further, it stated that it standardized the consultant contract language to include conflicts of interest and incompatible activities provisions. Additionally, it indicated that it obtained and was adapting for its use, time sheets and procedures used by other state agencies that receive federal funds. It stated that it also reminded contract managers of the need to ensure completion of contract deliverables before approving payment and was writing detailed procedures for invoice approval. It indicated it had implemented a system where a manager will review contractor deliverables and that no HAVA funds would be disbursed if contract obligations were not met and that this oversight would be shared by its new management consultant.

Finding #3: The office used questionable practices to procure goods and services related to HAVA.

The office bypassed competitive bidding for most HAVA expenditures. It obtained and then inappropriately used a Department of General Services (General Services) exemption from competitive bidding for 46 of the 77 HAVA-expensed contracts. Most of the contracts under this exemption did not have the urgency described in the justification provided to General Services and could have been competitively bid had the office planned better. Further, the scope of work sections for the voter outreach consultant contracts were vague, generally requiring only that the consultant "perform voter and election outreach activities" and did not establish any way to determine whether the consultants' efforts were successful. Further, the office could not provide us with a plan showing what activities these consultants were to complete by any specified deadlines. Also, the office did not adequately ensure that its voter outreach consultants were using their compensated time to educate voters about HAVA-related issues.

Additionally, the office did not follow General Services policies in making California Multiple Award Schedule (CMAS) procurements when it split purchase orders to avoid CMAS procurement limits and competitive bidding requirements on two HAVA-funded projects. Further, for 10 of the 12 HAVA-expensed purchase orders it made using CMAS, the office did not follow recommended policy and obtain comparison quotes from other qualified vendors. The office also did not follow state procurement policies that require informal bids for two of the three non-CMAS commodity purchase orders in our sample that the office issued and paid with HAVA funds. As a result of these non-competitive procurement practices, the State is less sure that the office obtained the best value for the purchases it made with HAVA funds.

To establish or strengthen controls over procurements, we recommended that the office take the following actions:

- Follow competitive bidding requirements to award contracts and restrict the use of exemptions to those occasions that truly justify the need for them.

- When competition is not used to award contracts, establish a process to screen and hire consultants.

- Follow control procedures for the review and approval of contracts to ensure that contracts include a detailed description of the scope of work, specific services and work products, and performance measures.

- Follow General Services policies when using CMAS for contracting needs.

- Comply with state policy for procuring commodities.

Office Action: Pending.

The office responded that it would restrict the use of exemptions from competitive bidding to those occasions that truly justify the need. It also stated it was developing and documenting a process to screen and hire consultants and, in the interim, would award non-competitively bid contracts only if specifically approved by the secretary of state and General Services. Additionally, the office indicated that it established a standard contract review process that requires a detailed scope of work, specific deliverables, and performance measures. Further, it stated that it would comply fully with applicable state procurement policies.

Finding #4: The office spent HAVA funds on activities for which it had no spending authority.

The office bypassed the Legislature's spending approval authority. It inappropriately executed voter outreach contracts valued at $230,400 in fiscal year 2004–05 although it had no spending authority for these activities. Additionally, while deliberations over the office's fiscal year 2004–05 HAVA spending authority were taking place, the consultants that received fiscal year 2004–05 contracts to perform voter outreach work had already begun work and subsequently submitted invoices for their services. To pay for these invoices, the office charged $84,600 in associated contract costs to its HAVA administration account, which was inconsistent with its past practice for paying for such activities.

We recommended that the office prohibit fiscal year 2004–05 expenditures for HAVA activities until it receives spending authority from Finance and the Legislature.

Office Action: Pending.

The office responded that it would make sure that fiscal year 2004–05 funds are not spent or obligated without the appropriate spending authority.

Finding #5: The office unnecessarily delayed grant payments to counties.

The office failed to disburse HAVA funds for replacing voting machines within the time frames outlined in its grant application package, internal procedures, and contracts with counties, causing some to lose interest income they could have used to replace their voting equipment. In a September 2003 application packet, the office said that payment would occur approximately 30 days after a county received written confirmation from the office that its application had been approved and a contract had been executed. Correspondingly, the office's internal accounting procedures outlined the timeline for payment at approximately 30 days for application approval and 30 days for disbursement of funds, for a total of 60 days. However, despite these assurances of prompt payment, the office disbursed voting machine replacement funds an average of 168 days after receiving the application, causing one county to submit a claim for lost interest income.

We recommended that the office disburse federal HAVA funds to counties for voting machine replacement within the time frames set out in its grant application, procedures, and contracts.

Office Action: Pending.

The office responded that once it receives spending authority, it would expeditiously disburse funds to eligible counties that applied for voting machine replacement funds within the time frames set out in the grant application, procedures, and contracts.