

Office of the Secretary of State

Help America Vote Act of 2002

Presentation by

Elaine M. Howle
California State Auditor

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This presentation document is only intended to outline selected portions of the report. For a more complete explanation of the points outlined in this document, please refer to the report.

**Report 2004-139 Office of the Secretary of State:
Clear and Appropriate Direction Is Lacking in Its Implementation
of the Federal Help America Vote Act (December 2004)**

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AUDIT BACKGROUND AND SCOPE

BACKGROUND

- Help America Vote Act (HAVA) passed in October 2002. HAVA is intended to make federal elections fairer and more accurate by addressing concerns over incomplete voter registration lists, inaccurate voting machines, and inefficient election administration.
- HAVA contains numerous requirements that every state must meet, most of which are to take effect between January 1, 2004, and January 1, 2006.
- Requirements include replacing punch card and lever-operated voting machines, allowing voters to verify their votes before casting their ballots, providing voters with provisional ballots, providing access for voters with disabilities, and creating a statewide voter registration list.
- In fiscal year 2003–04, California received a total of \$180.6 million in federal HAVA funds, and it expects to receive another \$169.6 million in fiscal year 2004–05.
- As of June 30, 2004, the office had spent only \$46.6 million of the \$81.2 million in HAVA funds authorized by the Legislature for fiscal year 2003–04.

TABLE 3

**HAVA Funds Awarded, Authorized, Spent or Obligated, and Unspent or Unobligated as of June 30, 2004
(In Millions)**

HAVA Funds	Federal HAVA Funds Awarded	Authorized Spending Amount	Amount Spent or Obligated	Amount Awarded but Unspent and Unobligated
Discretionary funds	\$ 27.3	\$23.9	\$ 6.9	\$ 20.4
Voting machine replacement funds	57.3	57.3	39.7	17.6
Mandatory requirements funds	94.6	0.0	0.0	94.6
Funds to provide access for individuals with disabilities	1.4	0.0	0.0	1.4
Totals	\$180.6	\$81.2	\$46.6	\$134.0

Source: Federal award documents and Office of the Secretary of State budget and accounting records.

Both federal and state laws generally prohibit the use of public funds for partisan political activities for the purpose of affecting the outcome of a campaign.

The use of federal funds to support partisan political activities is addressed by the Hatch Act. The Hatch Act prohibits federally funded employees, including state employees who work primarily on federal programs, from engaging in partisan political activity for the purpose of interfering with or affecting the results of an election or nomination for office.

Similarly, under California law the general rule is that state funds may not be used for those purposes. In addition, other federal regulations establish principles and provide guidance for determining whether various costs are allowable and how they are to be charged to federal programs.

SCOPE

- Review the office's fiscal year 2003–04 budget request and verify that all components of the HAVA grants were implemented within the spirit and letter of the law.
- Determine whether the office used HAVA funds only for allowable purposes and in accordance with Section 28 of the Budget Act of 2003.
- Determine whether the office implemented HAVA in compliance with federal requirements.
- Review and evaluate the office's process of awarding and disbursing HAVA funds and determine whether it effectively oversees the use of the funds it awards to ensure that recipients use them only for allowable purposes. ■

AUDIT HIGHLIGHTS

- ☑ The Office of the Secretary of State's (office) insufficient planning and poor management practices hampered its efforts to implement the Help America Vote Act (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 HAVA purchases 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.
- ☑ 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.
- ☑ The State's chief elections office lacks a policy that strictly prohibits partisan activities. ■

AUDIT RESULTS

The Office's Lack of Planning Is Delaying Its Implementation of Some HAVA Requirements

The office may not implement by January 1, 2006, a computerized statewide voter registration list that is maintained and administered at the state level.

The final phase of the project, which provides training to office staff and county elections staff, is not expected to be complete until June 30, 2006, six months after the deadline.

The office could have been more proactive in assisting counties in achieving successful statewide implementation of other Help America Vote Act (HAVA) requirements.

In June 2004, the U.S. Department of Justice (Justice) reported that in its monitoring of California's March 2, 2004, primary election, it observed numerous instances of noncompliance with HAVA requirements at several local election polling locations.

Justice attributed such noncompliance to a lack of adequate training of elections officials and poll workers about the new HAVA requirements.

Justice asked the office to provide a description of the steps it had taken to provide information and resources to counties to ensure proper instruction and implementation of HAVA's terms and what further steps it was prepared to take to make full compliance with HAVA a reality statewide.

The secretary of state responded to Justice in July 2004, and listed actions the office planned to take, such as working with elections officials to educate and train poll workers and officials through making grants available for that purpose. Although it took some steps to ensure compliance with requirements, most occurred too late to be of assistance or had not yet occurred.

In August 2003, the office received authority to spend \$4.4 million to train local poll workers and elections officials in meeting HAVA's requirements, but as of September 23, 2004, had yet to allocate these funds to counties.

Shortcomings in meeting HAVA deadlines can be traced to the office's incomplete planning for each of the activities it intended to undertake.

The state plan neglected to include implementation plans for any of its planned activities.

Although required by HAVA, the state plan did not detail the goals and objectives or the measures it would use to gauge whether planned activities were successful, the milestones for tracking progress, and the individuals assigned to be responsible for ensuring that each goal and objective is met.

The Office Has Not Used All the HAVA Funds It Was Authorized to Spend

Although it received authorization to spend \$81.2 million in federal HAVA funds in fiscal year 2003–04, as of June 30, 2004, it had spent or obligated only \$6.9 million in discretionary funds earmarked for improving the administration of federal elections and \$39.7 million for voting machine replacement.

According to executive staff, all the spending did not occur because of uncertainty about the cost of complying with various mandatory components of HAVA.

Executive staff stated that the October 2003 special election, the March 2004 primary election, and the controversy over the problems with certain electronic voting equipment consumed office resources.

As of the end of October 2004, the office had not spent any of the \$94.6 million in federal funds that California received in June 2004 for achieving compliance with HAVA's mandatory requirements.

HAVA became law in October 2002, and as of August 2003 the office had the authority to spend HAVA funds. Had the office implemented some of the proposed projects outlined in the Section 28 application, it could have been in a better position to assist counties in meeting the requirements by January 1, 2004.

The office could have chosen to use some discretionary funds to hire consultants to help in developing the detailed plans needed to implement proposed projects.

In its response to our audit report, the office stated that it had provided a detailed spending plan to the Department of Finance on December 2, 2004.

The Responsibilities for Administering the Activities Required by HAVA Are Not Clearly Assigned

The office did not assign anyone the overall responsibility for implementing the HAVA requirements. Instead, direction for administering HAVA activities came from many staff in the executive office.

Executive office staff requested contracts for HAVA consultants but did not complete the normal contract request paperwork that would have required them to justify in detail the work to be performed.

Executive office staff also frequently directed the accounting office staff to expedite payments to HAVA consultants.

No one performed the management tasks of specifying who would manage each project, defining the scope of each project, estimating the duration of project activities, assigning the activities and creating a project schedule, determining resource needs and costs, and developing a project implementation plan.

The California Association of Clerks and Elections Officials (association) in late December 2003 wrote to the office complaining about the lack of communication regarding guidelines for implementing HAVA provisions and its funding allocation decisions.

An association member also expressed frustration that the office did not provide clear reasons for its delay in disbursing HAVA voting machine replacement funds.

The office also had problems when it communicated with the association that it wanted feedback regarding the feasibility study report for the statewide voter registration database one week before the November 2, 2004, election.

The office eventually recognized its need for project management services to successfully implement HAVA and gave notice of its intent to award a contract for such services on December 1, 2004.

The State's Chief Elections Office Lacks a Policy That Strictly Prohibits Partisan Activities

Neither the office's conflict-of-interest code nor its statement of incompatible activities specifically prohibits office employees or its consultants from participating, or appearing to participate, in partisan activities.

Although the office includes provisions regarding incompatible activities and potential conflicts in some of its consultant contracts, its practice is inconsistent. As a result, the office cannot be sure that all consultants will know not to use public resources to participate in partisan activities that are prohibited by state laws or to advise the office when they encounter a potential conflict of interest.

The Office Did Not Provide Job Descriptions to Employees Working on HAVA Activities

The office did not provide many employees with job descriptions that explained their responsibilities.

Five of seven employees we interviewed indicated that they never received a job description covering their HAVA duties.

Without job descriptions that explain employee roles and responsibilities, the office cannot be sure that employees adequately perform those activities and comply with HAVA and other legal requirements.

THE OFFICE'S POOR ADMINISTRATION OF HAVA LED TO QUESTIONED COSTS

The Executive Office Did Not Follow Many Established Control Processes in Its Administration of the HAVA Program

Executive staff overrode internal controls. For example, although in fiscal year 2002–03 it required time sheets to support time spent working on HAVA activities, for fiscal year 2003–04 it discontinued the use of these time sheets.

Executive staff did not always follow its process when requesting contracts. Because many HAVA contract requests came directly from the executive office, established controls for the independent review and approval of these requests by other offices were frequently bypassed.

As such, many of these contracts were not justified as to their relationship to HAVA. No explanation was provided on how the scope of the contract related to HAVA, nor was there a process established for selecting the consultants who received the contracts.

The Office Could Not Support the Personal Service Costs It Charged to HAVA

To support the amount of salaries and wages charged to a federal fund source, federal cost principles require certifications be prepared at least semiannually for all those employees who work full-time on a single federal award.

Federal cost principles also require that the allocation of all salaries or wages for employees who work less than full-time on a single federal award be supported by monthly personnel activity reports or equivalent documentation, such as monthly time sheets.

The office neither prepared the required certifications for its employees who worked full-time on HAVA activities nor instructed its employees who worked part-time on HAVA activities to complete monthly time sheets or other personnel activity reports to support the \$1,025,695 in personal service costs charged to HAVA funds in fiscal year 2003–04.

Of the five full-time employees we reviewed whose entire salaries the office charged to HAVA in fiscal year 2003–04, two submitted staff activity reports for attending certain events that did not appear related to HAVA.

One reported that she attended events such as a legislator’s reception to “spread the word” about the office, a governor’s rally to get a sense of the governor’s message, and a unity luncheon to network and represent the office.

Another employee’s staff activity reports indicate that he attended events such as an annual holiday mixer and a celebration of Canada Day, attended an equality awards dinner, and marched in a national night out to demonstrate unity against neighborhood crime.

In our review of these and many other staff activity reports submitted, we found no indication of how these events related to allowable HAVA activities.

The Office’s Poor Oversight of HAVA Consultants Also Resulted in Its Questionable Use of HAVA Funds

In many instances, costs the office charged to HAVA funds were for activities that do not appear to relate to HAVA activities, and thus we question the use of federal funds to pay for them.

Of the 169 staff activity reports submitted between December 3, 2003, and September 5, 2004, by the regional outreach consultants hired by the office, 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.

Some of these activities appear partisan in nature. The federal Hatch Act generally prohibits state employees whose primary responsibilities are funded with federal funds from participating in partisan activities for the purpose of affecting the outcome of an election or nomination for office, and state law places similar restriction on the use of public resources for partisan political activities.

Although the application of the Hatch Act to consultants is unclear, permitting contractors to engage in partisan activities as part of their work on a federal program certainly violates the spirit of those laws. Further, state law makes it unlawful for a consultant to use public resources for partisan activities.

We could not quantify the amounts paid to consultants for attending these types of events because until mid-September 2004, the office did not require contractors to indicate on their invoices the activities they were billing for or how much time they spent on each activity.

The Office Does Not Adequately Administer Its Consultant Contracts

The office exercised poor oversight of a law firm's contract, approving and paying almost \$70,000 for invoiced services that violate the terms of the contract.

The contract states that the daily charges would not exceed \$1,200 per day; however, we identified 17 separate days on which the amount charged exceeded the limit.

Also, rather than providing services one day a week as called for in the contract, 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.

The office also paid for services rendered in November 2003—before a binding contract was in place.

The Office Has Taken Some Steps to Improve Its Administration of HAVA Funds

The office attempted to implement some measures to improve its management of HAVA funds between mid-May and mid-September 2004 but was forced to take even stronger actions, including terminating all existing contracts with HAVA regional outreach consultants.

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| May 14, 2004 | Instituted a procedure requiring fiscal review and approval for proposed HAVA expenditures. |
| August 11, 2004 | Sent a memorandum to regional offices outlining expectations regarding several outreach activities and asked for weekly activity reports. |
| September 1, 2004 | Regional directors required to submit weekly reports of all their HAVA outreach activities. |
| September 14, 2004 | Instructed regional directors to advise HAVA consultants that documentation of the activities performed and the time spent on each task would be required before payments would be made. |
| September 16, 2004 | Sent a time sheet template to regional directors for HAVA contractors to use. |
| September 17, 2004 | Established additional procedures to follow prior to contracting for services that require expenditure of HAVA funds. |
| September 23, 2004 | Secretary of state directed that all HAVA consultants in field offices be given termination notices. |

On October 28, 2004, the secretary of state announced his appointment of experienced office staff to replace the former undersecretary, who was transferred, and the chief counsel, who had resigned earlier to take a job at another agency.

THE OFFICE USED QUESTIONABLE PRACTICES TO PROCURE GOODS AND SERVICES RELATED TO HAVA

The office bypassed competitive bidding for most HAVA expenditures by obtaining and then inappropriately using a Department of General Services (General Services) exemption from competitive bidding.

As shown in Table 4, the office awarded 77 contracts totaling \$4.9 million, only one for \$29,000 was competitively bid, while 46 contracts totaling \$1.5 million were awarded using the General Services exemption.

TABLE 4

Procurement Method Used for HAVA Service Contracts Between June 2003 and September 2004

Procurement Method	Number of Contracts*	Total Amount
No-bid exemption [†]	46	\$1,546,000
California Multiple Award Schedule	12	2,394,000
Contracts with other governmental entities [‡]	5	586,000
Legal services [‡]	2	345,000
Contracts for services under \$5,000 [‡]	11	17,000
Competitively bid	1	29,000
Totals	77	\$4,917,000

Source: The Office of the Secretary of State's list of HAVA contracts.

* Does not include commodity purchase orders.

[†] One no-bid contract, entered into in June 2003, included a no-bid justification separately approved by the Department of General Services. However, later amendments to the contract used the no-bid exemption.

[‡] Statutorily exempt from competitive bidding.

The justification the office provided for this exemption was the urgent need to meet the deadlines set forth in HAVA. However, most of the contracts entered into under the no-bid exemption were for services that did not relate to any specific HAVA deadline.

As shown in Table 5, the office used the no-bid exemption to hire consultants to perform voter outreach and registration, implement media campaigns, handle public relations, and monitor poll workers.

Most of the activities performed by these consultants were for regularly scheduled elections occurring in March and November 2004.

The office could not provide us with documentation, such as a plan showing what activities these consultants were to complete by March 2004 or by any other specified deadline. The office also did not establish any way to determine whether its consultants' efforts were successful.

TABLE 5

Contracts Entered Into Under the Office of the Secretary of State's No-Bid Exemption

Description of Activities	Number of Contracts	Total Amount
Voter outreach, March and November 2004 elections	35	\$ 854,082
Media campaign, March 2004 election	5	500,000
Public relations	4	169,170
Poll worker monitoring, March and November 2004 elections	2	22,500
Totals	46	\$1,545,752

Source: The Office of the Secretary of State's list of HAVA contracts.

The office used the exemption to contract for activities relating to the November 2004 election and beyond. Of the 46 contracts executed under the exemption, 27 (59 percent) had start dates occurring after the March 2004 election, with most ending in November or December 2004.

The Office Did Not Follow General Services' Policies in Its Use of CMAS Contracts

The office also did not follow General Services' policies in making California Multiple Award Schedule procurements, and did not follow state procurement policy regarding commodity purchases.

The office appears to have split purchase orders to avoid CMAS procurement limits and competitive bidding requirements.

In June 2004, the office used CMAS to procure \$90,000 in IT consultant services and in the next month used CMAS three more times to procure IT consulting services from the same vendor for the same project. The three subsequent CMAS purchase orders—for \$459,000, \$55,000, and \$27,000, respectively, along with the original \$90,000 purchase order totaled \$631,000.

The office also bypassed CMAS order limits by using multiple purchase orders to procure \$1,145,000 in IT consulting services from another vendor for its voting systems advisory project. The consulting services were to inventory, test, provide security support, and monitor related electronic voting systems.

Despite its policy to follow the same practices General Services requires of other state agencies, the office did not obtain competitive quotes for 10 of 12 HAVA-expensed CMAS purchase orders.

Two examples of these purchase orders included one for \$413,000 in consulting services for a voting systems project, and another for \$56,000 in translation services.

The Office Did Not Follow State Procurement Policy in Its Purchase of Commodities Paid for With HAVA Funds

According to state procurement policy, for all commodity purchases over \$5,000, state agencies are required to obtain at least two informal bids.

Of the three commodity purchases we tested, the office purchased more than \$9,200 in poll worker brochures in January 2004 from one vendor and spent more than \$13,800 for “My Vote Counts” T-shirts, pens, and buttons in February 2004 from another vendor, but did not seek bids before making those purchases.

The Office Spent HAVA Funds on Activities for Which It Had No Spending Authority

The office bypassed the Legislature’s approval authority by inappropriately executing contracts and charging non-administrative expenditures to its fiscal year 2004–05 HAVA administrative expenditures account.

Between July 1, 2004, and September 7, 2004, the office entered into 18 consultant contracts totaling \$230,400 and later paid consultants \$84,600 through these contracts for voter outreach activities.

Until early September 2004, the office had not received any authority from Finance and the Legislature to spend HAVA funds to pay for activities taking place in fiscal year 2004–05, except for the administrative costs relating to HAVA.

Although it had not received spending authority for such activities, the office paid \$84,600 to voter outreach consultants in fiscal year 2004–05 by inappropriately charging these activities to its HAVA administration account.

This approach was inconsistent with the office’s past practice for paying for such activities. It was only after failing to receive spending authority for voter outreach activities that the office began charging these activities to the administration account.

On September 24, 2004, the office sent out a letter giving 30-day termination notice to all of its voter outreach contract consultants. However, because it entered into contracts and allowed consultants to start work on activities for which it had not yet received spending authority, the office put itself in a position of having to decide whether not to pay consultants for services rendered in good faith or pay the consultants by bypassing the Legislature’s authority over spending.

THE OFFICE UNNECESSARILY DELAYED GRANT PAYMENTS TO COUNTIES

The office failed to disburse HAVA funds for replacing voting machines within 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.

Of the \$57.3 million allocated, the office disbursed \$34.4 million (60 percent) to qualifying counties as of June 30, 2004.

In a September 2003 application packet, the office notified counties of their allocated amounts, invited them to apply for these grant funds, and 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.

Despite this language, the office disbursed these funds an average of 168 days after receiving the application, causing one county to submit a claim for lost interest income.

The executive office took an average of 56 days to approve applications, even though staff had already thoroughly examined and approved them. The timeline in the accounting procedures indicates that it would take five business days to obtain this executive approval.

In addition, the office directed the State Controller’s Office to send the county checks to its Sacramento headquarters rather than to the counties directly. The office then took an average of 45 days to disburse the checks to the counties.

Some checks were held for a period of time because concerns had arisen that the voting systems purchased by some counties would not comply with HAVA’s accessibility requirements.

Other checks were held because of a controversy surrounding the direct-recording electronic voting systems purchased by some counties. However, it should be noted that the office took more than 120 days to pay two counties that were not involved in any voting system controversy.

Further, the assurances of HAVA compliance provided by the counties were included in their original application packets and were not obtained after the controversies over the voting systems arose. Therefore, it was not necessary to obtain additional assurance from the counties and should not have added any delay in disbursing funds.

Because of delays in disbursement, Los Angeles County requested payment of approximately \$27,000 in interest that it asserted it could have earned had the office made timely payment on the contract. ■

RECOMMENDATIONS

To ensure that it successfully implements the requirements called for in HAVA, the office should 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 meet expectations.

To establish or strengthen controls, comply with federal and state laws, and reduce the risk that HAVA funds are spent inappropriately, the office should 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 that includes an annual certification that employees have read and will abide by the 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 federal programs is supported with appropriate time sheets and certifications.
- 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.
- 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.
- Follow competitive bidding requirements to award contracts and restrict the use of exemptions to those occasions that truly justify the need for them.
- Follow General Services' policies when using CMAS for contracting needs.
- Comply with state policy for procuring commodities.
- Prohibit fiscal year 2004–05 expenditures for non-administrative HAVA activities until it receives spending approval authority from the Department of Finance and the Legislature.
- Disburse federal HAVA funds to counties for voting machine replacement within the time frames set out in its grant application, procedures, and contracts. ■