



*OFFICE OF INSPECTOR GENERAL
U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001*

February 9, 2022

The Honorable James Comer, Ranking Member
House Committee on Oversight and Reform
2105 Rayburn House Office Building
Washington, DC 20515

The Honorable Rodney Davis, Ranking Member
Committee on House Administration
1216 Longworth House Office Building
Washington, DC 20515

The Honorable Jody Hice, Ranking Member
House Committee on Oversight and Reform, Subcommittee on Government Operations
2105 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Comer, Davis, and Hice:

This letter is in response to your October 2020, December 2020, and February 2021, letters to the former U.S. Election Assistance Commission (EAC) Inspector General requesting a review of the State of California's SKD Knickerbocker, LLC (SKDK) award and requesting assurance that Coronavirus Aid, Relief, and Economic Security (CARES) Act and Help America Vote Act (HAVA) funds were used as intended. Upon my arrival as Inspector General, and after I received your November 2021 letter, EAC management promptly provided me with documentation and correspondence between the California Secretary of State Office (SOS, or Office) and EAC regarding the beforementioned inquiry and associated allegation.

I reviewed the correspondence and documentation provided by EAC management, CARES Act guidance, California progress and annual reports, and the contracted audit results from the independent public accounting (IPA) firm my office hired, which reviewed the SKDK contract and performed internal control and invoice testing. Quality control procedures to verify the accuracy of information presented in this letter were performed with assistance from the U.S. Agency for International Development Office of Inspector General. Legal review was conducted by U.S. AbilityOne Commission Office of Inspector General.

The information below is intended to provide a description of key events and focus on potential issues within the purview and authority of EAC OIG. Specifically, I focused the review on actions EAC officials took in response to the complaint, how the SKDK contract was awarded, whether costs were allowable, and EAC grant guidance and procedures, including those



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established to oversee HAVA and CARES Act funding. This letter provides preliminary information surrounding the SKDK award—\$11.8 million (17 percent) of the approximately \$69.8 million of funds being audited for California. I expect the full audit of California’s EAC grant funds, with any associated recommendations to be issued in Spring 2022.

Summary of Results

After receiving EAC funding authorized to prevent, prepare for, and respond to coronavirus for the 2020 Federal election, SOS executed the SKDK contract using state regulations for administering contracts during an emergency. The contract was not a sole source acquisition.

Based on sampled testing, the funds spent on the SKDK education campaign were allowable, no instances of lobbying were found, and SKDK did not receive inappropriate access to voter information. The Vote Safe California messaging was intended to help voters understand the vote by mail and registration processes and did not meet the definition of a registration drive or Get-Out-the-Vote activity. As a result, we have no recommendations related to the SKDK contract for the California Secretary of State Office at this time.

EAC management was responsive to complaints surrounding the contract and conducted additional due diligence beyond the CARES monitoring reports. However, I identified some areas that will require EAC leadership’s continued attention including its reliance on each state’s internal control system, a lack of time to conduct pre-award due diligence, and administrative resource and reporting constraints that limit the ability for robust grant management throughout the life of the awards.

Background

In March 2020, the CARES Act was signed into law, providing EAC with \$400 million in Election Security Grants to distribute to states “to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.” This emergency funding supplemented the \$380 million and \$425 million appropriated in the Consolidated Appropriation Acts of 2018 and 2020, respectively.¹ The CARES Act required EAC to make the payments to states by April 27, 2020.²

On April 6, 2020, EAC Acting Executive Director sent a letter to all Chief State Election Officers and State Election Directors with information on the purpose and allowable use of

¹ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 562 (2018); Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, 133 Stat. 2416 (2020).

² Pub. L. No. 116-136, 134 Stat. 530 (2020).



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CARES Act grants; how to request disbursement of funds with a template letter; and information on timing, matching, and reporting requirements as outlined in the CARES Act.

In general, EAC grants are distributed to states based on a formula for a minimum payment plus a voting age population proportional amount as outlined by HAVA.³ On April 14, 2020, SOS requested the full \$36.5 million in CARES funds available to California, based on the formula calculation. In the letter requesting disbursement of funds, California certified it would use the funds for activities consistent with the laws.⁴

The letter outlined several activities the funds would be used for such as expanding vote-by-mail and early voting in-person opportunities; maximizing curbside access; increasing the number of ballot drop boxes; encouraging every voter to verify their registration status, register online, or re-register; expanding the use of vote-by-mail tracking; and providing voter assistance while maintaining social distancing. The letter also stated California may use funds for costs associated with mailing, printing, postage, staffing, equipment, outreach, connectivity, and facilities.

Complaints and EAC Response

On September 25, 2020, SOS signed a contract with SKDK to provide voter outreach and public education services on behalf of the counties of California and the State of California in response to the coronavirus. The purpose stated in the contract was to “ensure that the 2020 election is safe, free, fair, accessible, and secure for all California voters.” The total contract for statewide education and outreach was \$35 million, and the terms of the agreement were August 13, 2020, to December 15, 2020.

In September 2020, EAC management and OIG received complaints regarding the SOS contract with SKDK. On October 7, 2020, EAC contacted SOS to provide notification of the complaint and requirements for CARES funds to be spent appropriately. SOS responded to the EAC letter on October 15, 2020, providing (1) information on election and voter changes made to protect Californians in the November federal election; (2) the process used for procurement resulting in the SKDK contract including details of the scope of work; and (3) links to the Vote Safe California communications and materials, some of which were products of the contract. The letter also attested that federal funds were not being used for Get-Out-the-Vote activities.

After receiving Congressional concerns about the firm potentially using funds for unallowable costs, EAC requested additional documentation of SOS on March 26, 2021, including detailed invoices from the contract and documentation showing the services and communications that

³ Pub. L. No. 107-252 § 101(d)(codified at 52 U.S.C.A. § 20901(d)) (2002).

⁴ EAC posted all state request letters on its public website. See <https://www.eac.gov/payments-and-grants/2020-cares-act-grants>



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were paid for with EAC federal funds. On April 16, 2021, SOS provided EAC with the requested information.

According to SOS, \$11.8 million in EAC HAVA funds were used for the SKDK contract—\$9.9 million of which were CARES Act funds and \$1.9 million of 2018 Consolidated Appropriations Act funds. SOS reported that \$22.8 million in State general funds were also used to fund the contract. In addition to hours billed for seven staff, invoice information from the SKDK contract included descriptions of costs, such as those listed in Figure 1.

In its April 2021 response to EAC, SOS reiterated that it understood and took seriously the requirements related to federal HAVA funds and ensured that the Vote Safe California public educational campaign complied with federal requirements.

In addition to EAC’s due diligence to understand the SKDK contract and associated costs, EAC OIG entered into a contract on June 9, 2021, with McBride, Lock and Associates, LLC (IPA firm) to conduct audits of eight states that received EAC grants, including California. The audit objectives are to determine if each State used EAC funds for authorized purposes, properly accounted for and controlled property, and used the funds in a manner consistent with the informational plan provided to EAC. The contract scope of work also included a special project to evaluate if the SKDK procurement was sole sourced, and test invoices related to that contract. This letter is informed by the IPA firm’s work on the special project. The full audit of California SOS is not yet formally concluded.⁵

Figure 1. Example of Invoice Descriptions:

Project Management
Script Writing/Creative Process
Media Buyer Strategy/Targeting
Text Message Development/Monitoring
Digital Content Production
Digital Buy Analysis
Grassroots Program Management
Validator Outreach
Rapid Response Content Creation
Digital Resizing
Consulting Services for 3rd Party Outreach
Celebrity Outreach
PSA Prep and Management
Translation Services
Print Ad Project Management
Campaign Management Plan
Communications Plan
Monthly Status Report
Media Buy- with detail
TV Production – “Deliveries” and “Check all the Boxes”
Hispanic Creative Production
Foreign Language Radio

Source: EAC OIG Analysis of SKDK Invoices.

⁵ In July 2021, the announcement memo for the audit was transmitted to SOS and the entrance conference was held. Initially fieldwork was planned for August, but SOS requested fieldwork be postponed until after California’s special election. Former OIG leadership granted that request, and fieldwork began in early December.



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Procurement

Upon the state request for disbursement of EAC grant funds, legislation requires them to follow applicable state requirements and to maintain records that are consistent with sound accounting principles. State records must fully disclose the amount and disposition of the grants, identify project costs financed with the grants and with other sources, and facilitate an effective audit. After requesting the funds in mid-April, California had approximately 6 months before the November general election to secure a contractor and for that contractor to execute the communication plan for a safe election. SOS reported that it relied on California State Contracting Manuals and its emergency contracting process outlined in Public Contract Code Section 1102, to meet the short timeframe.

Contract was not sole sourced. California's Public Contract Code Section 1102 states that an emergency is a "sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services." The California Governor declared a state of emergency on March 4, 2020, due to the outbreak of the coronavirus. The California State Contracting Manual exempts emergency contracts from advertising and competitive bidding. Despite not being required to undergo a competitive bidding process under the emergency exemption, SOS obtained proposals from multiple vendors and evaluated them using selection criteria.

The Office said it conducted market research to gather information about potential vendors that could deliver an informational campaign and prepared a notification of interest. According to the IPA firm results, SOS requested 12 firms to express their level of interest based on a statement of work, and 7 firms submitted a proposal. According to SOS, the review of proposals considered several areas, including the Scope of Work, experience, demonstrated results by firm and personnel, resource coordination, measurability of outcomes, and cost effectiveness. The Office selected three finalists for remote presentations to a panel of SOS employees in early August 2020.

The results were documented in a selection statement, which indicated that all three firms proposed using the full \$35 million and made general observations about the presentations. The statement said that based on the proposals and presentations, SKDK was the strongest vendor to meet the needs of the Vote Safe outreach and education campaign.

I did not evaluate whether the use of the emergency contracting procedures was warranted, but noted that there was an updated contract summary signed in February 2021, after the California legislature formally passed the appropriation for funding the State's portion of the contract. The update stated the services were urgent, temporary, and occasional to support the statewide election with a compressed timeline during a pandemic.



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Use of Funds for Authorized Purposes

EAC's Funding Advisory Opinion lays out the authorized uses for HAVA funds in response to five questions as indicated in Figure 2.⁶ In addition to these questions, the CARES Act and pandemic prompted several new inquiries into how funding could be used to prepare for and respond to coronavirus. EAC issued guidance and put frequently asked questions on its website to assist states. The guidance applied to all HAVA funds, including those awarded with 2018 and 2020 appropriations.

EAC published that CARES and HAVA funds can be used to communicate changes in the voting process because of the pandemic, but cautioned that information be on voting procedures, rights, or technology. Items intended to "get out the vote" or merely encourage voting are not allowable.

McBride, Lock and Associates, LLC was contracted by EAC OIG as an IPA firm to test a sample of SKDK invoices to ensure no funds were used to conduct registration drives including advertising for the event, setting up booths, and paying salaries of employees who register new voters.

Federal funds were not used for registration drives. California launched a public education campaign called Vote Safe California. The messaging provided to voters was designed by SOS and promoted by SKDK. The IPA firm reviewed the messaging and concluded it was intended to help voters understand the vote by mail and registration processes and is therefore allowable under HAVA.

Figure 2. EAC Funding Advisory Opinion Guidance

May HAVA funds be used for the following voter registration related activities:

- 1) Producing voter registration forms?
No, must continue to be funded by the states.
- 2) Preparing and providing instructions on how to register to vote?
Yes, but the State must submit proper certification for Section 251 funds.
- 3) Conducting registration drives including advertising for the event, setting up booths, and paying salaries of employees who register new voters?
No.
- 4) Encouraging citizens to register to vote?
Yes, if educating about how to register to vote, but not for "get out the vote" activities. Contact EAC for a determination if not clear.
- 5) Training poll workers to register new voters?
Yes.

Source: EAC Funding Advisory Opinion FAO-08-005.

⁶ EAC Funding Advisory Opinion FAO-08-005 is available on EAC's website. See <https://www.eac.gov/documents/2010/9/14/funding-advisory-opinion-08-005-eac>



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Messaging did not meet the definition of Get-Out-the-Vote. The term Get-Out-the-Vote was used in the contract’s scope of work and SKDK’s proposal. SOS said the term was intended to ensure that tailored messaging could be provided to communities that would not otherwise be reached in general voter assistance campaigns. SKDK hired a consultant with Get-Out-the-Vote experience to help reach these communities. According to EAC guidance and grant management staff, EAC allowed states to use EAC grant funds for messages educating a specific population about safely voting during the pandemic. Similarly, EAC said an advertisement directing the public to California’s voting website is allowable because the website has educational information on how to vote safely or procedures for voting. Although, Get-Out-the-Vote was referenced in the contract documents, we found no specific activities or messaging that met the definition of Get-Out-the-Vote. There were some instances where Get-Out-the-Vote was part of a message to vote safely.

The EAC Funding Advisory Opinion and supplemental CARES Act guidance available on EAC’s website states educational activities must be specifically related to instructions on registering to vote, new voting procedures, rights, or technology, and cannot just encourage voting or Get-Out-the-Vote activities. SOS said that EAC has not defined or provided guidance on what constitutes Get-Out-the-Vote and there are no definitions in federal statutes, regulations, or case law. As a result, they used a Ballotpedia definition that states Get-Out-the-Vote is “a concerted effort to register voters and increase voter turnout during elections.”

According to EAC, the definition of Get-Out-the-Vote in EAC’s Funding Advisory Opinion is detailed and well known by state officials. Furthermore, EAC guidance encourages states to contact EAC if they are unclear on whether something constitutes a Get-Out-the-Vote activity. EAC grant management staff said that they received calls from many states asking for guidance, but did not recall any from California. The EAC website includes frequently asked questions and guidance that Get-Out-the-Vote activities are not allowed.

Lobbying

The IPA firm was required to report any instances of potential noncompliance with the federal grant recipient lobbying restrictions uncovered while conducting invoice testing.⁷ The firm found no instances of lobbying or attempting to influence the election as it pertains to messaging.

Access to Voter Information

VoteCal is California’s centralized voter registration database. Portions of the database are accessible to the public such as applying to register to vote or update registration, finding a

⁷ Lobbying, 2 CFR § 200.450.



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polling place, or seeing if a vote-by-mail was counted and if not, why. SKDK was not provided full access to VoteCal information, but was provided a listing of voters in various categories to receive a Secretary of State message regarding voter registration and voting by mail. The categories were first time vote-by-mail, first time voter, inactive, student/youth, seniors 65 and over, and voters with language assistance needs. SOS stated the purpose for sharing this information was to reach individuals who might otherwise not receive messaging through regular communications.

The California elections voter bill of rights states voter information may be provided to a candidate for office, a ballot measure committee, or other person for election, scholarly, journalistic, political, or governmental purposes, as determined by the Secretary of State. There is no prohibition for the Secretary of State providing the information to contractors. EAC stated that many firms across the country are provided voter registration lists, which is allowable if grant funds are not being used for partisan activity. EAC has no specific guidance on what voter information states can provide to contractors. Each state would follow its own laws and personally identifiable information restrictions.

EAC also noted that many states perform targeted outreach campaigns to ensure groups that don't have access to the internet can be educated. HAVA requires states to have a voter registration system⁸ and a voting system that is accessible to people that aren't native English speakers and those with disabilities.⁹

Required Reporting

The CARES Act required additional reporting by states beyond traditional HAVA grant reporting. A full accounting of the state's uses of the grants and how it was used to prevent, prepare for, and respond to coronavirus was required within 20 days of each election in the 2020 federal election cycle in that state. California submitted a progress narrative report to EAC on November 23, 2020, as required. The report outlined general activities funds were used for, the current amount expended, and unliquidated obligations for five category areas.¹⁰

For the communications category (including activities such as notifying the public of changes in registration, ballot request options, precautions or voting procedures), California reported the current amount expended and unliquidated obligations of \$11.5 million in Federal funds—the largest of the five categories. The state reported \$2.2 million for voting processes and costs, \$3.5

⁸ Pub. L. No. 107-252 § 303(codified at 52 U.S.C.A. § 21083)(2002).

⁹ Pub. L. No. 107-252 § 301(a)(3-4)(codified at 52 U.S.C.A. § 21081(a)(3)) (2002).

¹⁰ The report is available on EAC's website at:

https://www.eac.gov/sites/default/files/paymentgrants/cares/CA_CARES_Progress_Report_GE.pdf



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million for additional staff (poll workers and temporary staff), \$289,000 for security and training, and \$7.2 million for supplies such as laptops, IT equipment, cleaning supplies, and masks.

On March 19, 2021, California submitted the required Federal Financial Report for the period ending December 31, 2020 and another progress report.¹¹ According to EAC's most recent quarterly report to the Pandemic Response Accountability Committee, as of January 7, 2022, California had expended \$31.1 million, or 85 percent, of the CARES funds received. Closeout procedures to return unexpended funds had not started because the State had not yet submitted final reports.¹²

Risk Areas for EAC Leadership Attention

EAC will continue to face challenges as it relies on each State's internal control system with little time to conduct pre-award due diligence. Resource constraints for robust grant management and limitations to reporting exacerbate the challenge of ensuring funds are used as intended.

Time constraints and reliance on state internal controls. The requirements for EAC to distribute funds—in this case 30 days after enactment of the legislation—provides EAC with little time for pre-award due diligence. Instead EAC relies on each state's internal controls. In the case of California, the State Auditor's Office had identified CARES funding as high risk for the state to handle appropriately, also noting in 2013 that the state had not spent HAVA funds effectively.¹³ Nevertheless, EAC funds are distributed based on a formula laid out in the HAVA Act where states are entitled to the full amount of funds if they have a State Plan in place and certify they will spend the funds in compliance with applicable laws and requirements. Under this arrangement, EAC lacks time and mechanisms to encourage state compliance.

Resource and reporting limitations. When CARES was enacted in 2020, EAC's grant management team consisted of 1 full time staff with some contract support.¹⁴ They monitor and provide guidance to all states and territories receiving EAC funds. The size of the team and scope of states receiving funds limits EAC's capacity to conduct ongoing grant monitoring throughout the life of the award beyond reviewing the required reports and certifications that

¹¹ The report is available on EAC's website at:
<https://www.eac.gov/sites/default/files/paymentgrants/cares/CARES%20FFR/CA%202020%20CARES%20Financial%20and%20Progress%20Report.pdf>

¹² The report is available on EAC's website at:
https://www.eac.gov/sites/default/files/paymentgrants/cares/PRAC%20Reports/15011_Quarterly_Report_on_CARE_S_Funding_January%202022.pdf

¹³ California State Auditor, *CARES is High Risk to the State*, (Report 2020-610), January 2021.
California State Auditor, *Office of the Secretary of State Must Do More to Ensure Funds Provided Under the Federal Help America Vote Act Are Spent Effectively*, (Report 2012-112), August 2013.

¹⁴ EAC now has 3 full time staff and 2 contractors after elevating its grants management program to a standalone office in FY 2021.



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funds will be used for allowable purposes. EAC provides specific guidance and technical assistance to states on what is and is not allowable through published guidance, email, conference calls, webinars, and training events, but it relies on each state to follow that guidance or reach out for assistance.

Additional CARES reporting requirements provided high-level information on state expenditures. Similarly, the supplemental invoice information California provided included broad cost categorizations, making it difficult to address any potential issues with allowability until auditors tested the support behind the invoices. With increased administrative resources for grant management, EAC acknowledged it could implement a grant education program for states and more robust monitoring throughout the life of the award such as site visits or additional performance measures for grantees. Proactive oversight would increase visibility that state expenditures are appropriate and addressing the state's needs during the award, rather than after the completion of an OIG audit.

Concluding Observations

Based on the evidence reviewed, the California Secretary of State Office executed the SKDK contract in accordance with EAC guidelines, and funds were not used for unallowable costs such as registration drives or activities meeting the definition of Get-Out-the-Vote.

Opportunities exist to improve the depth of EAC's grant management and mitigate the risk of unallowable expenditures. I remain committed to safeguarding EAC funds and monitoring progress of Agency efforts to bolster its grant management. Please contact me if you have any further questions.

Sincerely,

Brianna Schletz

Brianna Schletz
Inspector General
U.S. Election Assistance Commission

cc: Donald L. Palmer, Chairman, EAC
Mona Harrington, Executive Director, EAC