



STATE OF NEW MEXICO

MARY HERRERA
SECRETARY OF STATE

DON FRANCISCO TRUJILLO II
DEPUTY SECRETARY OF STATE

November 14, 2008

Mr. Thomas R. Wilkey
Executive Director
U.S. Election Assistance Commission
1225 New York Avenue NW, Suite 1100
Washington, DC 20005

Dear Mr. Wilkey:

Thank you for the opportunity granted to extend the initial response date to November 14, 2008, pertaining to the EAC Management Decision: Report E-HP-NM-01-07. We have consulted with various other state entities in order to determine the most prudent course of action for New Mexico to comply with the Summary of Decision.

We wish to resolve the questioned costs of \$6,085,060 pertaining to the voter education contract by proceeding with option three (3) and offsetting them with a state expenditure. We also intend to offset with a state expenditure the unallowable costs of \$36,540 and the balance of the state matching funds totaling \$214,964, plus all applicable interest.

As you are aware and noted in your summary, New Mexico used \$11M of state funds to purchase HAVA compliant voting machines/equipment. Our intention is to utilize these monies to cover the amounts in question, which are as follows:

\$ 6,085,060
36,540
<u> 214,964</u>
\$ 6,336,564 (plus any applicable interest)

To do so, the Secretary of State's Office will need to go before our state legislature in the next session (January 20, 2009–March 21, 2009) and request an expansion of the legislative authorization for the purchase of the voting machines to include advertising and other election equipment costs. A prior period adjustment will then be made in order to remove the receivables and unallowable expenditures from the HAVA fund. We will need an authorized time frame to accomplish these tasks not to surpass June 30, 2009.

In addition to the steps described above, which will resolve the issue of the questioned costs, efforts will be taken to pursue the recovery of misspent funds.

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To resolve the issue of ownership of, and record keeping for, the equipment purchased through HAVA, our legal counsel informs us that the ownership must be addressed during the 2009 legislative session. There is a dispute between the Secretary of State and the counties related to ownership of the machines purchased through HAVA. Traditionally the counties have been responsible for ownership and maintenance costs; however, the former Secretary of State purchased the machines directly from ES&S and did not follow state statute requiring her to purchase the machines through the State Board of Finance. As previously reported, ten (10) counties have accepted ownership and the remaining twenty-three (23) have not.

The generation of program income by the state and its counties will be reported if applicable on the annual financial status reports (SF 269s) submitted to the EAC. To date, no program income has been collected by the state or counties in New Mexico.

In conclusion, the current administration is following New Mexico State procurement requirements. Thank you for your consideration in assisting us to resolve these findings.

Sincerely,



Mary Herrera
Secretary of State

MH:pt

c: Hon. Gary K. King, Attorney General
Hon. James B. Lewis, State Treasurer
Katherine B. Miller, Cabinet Secretary DFA
David Abbey, Director LFC