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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Expenditures by The Department of Veterans Affairs  
Medical Center, Oklahoma City, Oklahoma

**File:** B-247563.3

**Date:** April 5, 1996

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## DIGEST

1. The Department of Veterans Affairs' appropriation for medical care was not available for the purchase of novelty items to potential employees. These items did not directly contribute to an authorized function and, therefore, were not justified under the "necessary expense rule."
2. The Department of Veterans Affairs was not authorized to use its medical care appropriation for contest prizes during Women's Equality Week absent evidence that the expenditures related to authorized activities of the department.
3. The Department of Veterans Affairs' appropriation for medical care was not available to pay the sponsor fees and other costs associated with employees' participation in a competitive sporting event since such events are personal activities of the participants.
4. In the absence of a statute or regulation imposing liability, agency officials who are not designated as accountable officers are not personally liable for illegal, improper, or incorrect payments. Officials for whom the Department of Veterans Affairs requests relief are not accountable officers and, thus, are not liable for unauthorized payments.
5. To enhance accountability and help to safeguard public funds, agencies should designate officials authorized to issue third party drafts under the Department of the Treasury's third party draft system as accountable officers or issue regulations under which such individuals would be held financially liable for improper payments.

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## DECISION

In the aftermath of an investigation by the Department of Veterans Affairs' (VA) Office of Inspector General (IG), VA has requested an opinion on the legality of 72

expenditures made between March 1990 and September 1991 by the VA Medical Center in Oklahoma City, Oklahoma from VA's medical care appropriation. VA has also requested relief from liability for seven Medical Center officials believed to be liable for the payments. Finally, VA has requested guidance on the liability of various procurement and financial management officials for improper payments.

To facilitate our analysis and discussion, we have divided the 72 expenditures at issue into four general categories: recruitment, contests, refreshments, and miscellaneous purposes. In this decision, we address the Medical Center's 15 expenditures for recruitment and contests.<sup>1</sup> We will address the 57 expenditures for refreshments and miscellaneous purposes in a separate decision.

As discussed below, we conclude that of the eight recruitment-related expenditures totalling \$10,096.71 submitted for our review, four, totalling \$2,782.21, were unauthorized. In addition, we conclude that all seven of the Medical Center's contest-related expenditures totalling \$2,394.59 were unauthorized. Finally, we conclude that the officials for whom VA has requested relief are not liable for the improper payments.

## BACKGROUND

During the period covered by the IG's investigation, the Medical Center purchased a variety of novelty items for distribution in connection with its recruiting efforts.<sup>2</sup> Specifically, the Medical Center separately purchased holiday rope pens, folding scissors, and shoe laces imprinted with the Medical Center's logo or slogan totalling

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<sup>1</sup>An attachment to this decision identifies the recruitment and contest-related expenditures addressed.

<sup>2</sup>Four of the eight recruitment-related expenditures were associated with the Medical Center's activities at the 1991 Oklahoma State Fair. We previously concluded that VA's medical care appropriation was available for three of these expenditures. B-247563.2, May 12, 1993 (regarding the Medical Center's rental of a booth and its purchases of matchbooks and jar openers). In this request, VA also asks whether the medical care appropriation was available for its purchase of balloons, ID kits, and buttons imprinted with the VA seal and the Medical Center's telephone number. Since there is no meaningful distinction between the expenditure for balloons, ID kits, and buttons and the other Fair-related expenditures addressed in our prior decision, we conclude that VA's medical care appropriation was available for this fourth expenditure as well.

\$2,507.10 for potential nurse recruits at three colleges where VA maintains adjunct facilities.<sup>3</sup> In addition, the Medical Center purchased \$275.11 worth of patches for the local Explorers Post.

During the same period, the Medical Center purchased three gift certificates for local restaurants and a silk plant, totalling approximately \$80.00, for distribution as prizes during Women's Equality Week, 1990. The Medical Center also made three expenditures totalling \$2,314.60 in connection with the 1991 Presbyterian Hospital Corporate Challenge, a local athletic event in which Medical Center personnel participated. Specifically, the Medical Center paid a \$1,200.00 sponsor fee, purchased t-shirts for Medical Center participants, and rented a tent for the event. According to Medical Center officials, participation in the Corporate Challenge enhanced employee morale and publicity for the Medical Center and demonstrated the Medical Center's emphasis on "networking with other . . . leading corporations."<sup>4</sup>

Payments for these items were made from VA's appropriations for "Veterans Health Service and Research Administration, Medical Care" for fiscal years 1990 and 1991. The appropriations were available, among other things, for necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities and for furnishing inpatient and outpatient care and treatment to VA beneficiaries. Title I of the Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, 1991, Pub. L. No. 101-507, 104 Stat. 1351, 1352-1353 (1990); Title I of the Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, 1990, Pub. L. No. 101-144, 103 Stat. 839, 840-841 (1989).

## DISCUSSION

Under 31 U.S.C. § 1301(a) (1994), appropriated funds are available only for authorized purposes. During the period covered by the IG's investigation, VA did not have express authority to make the types of recruitment and contest-related expenditures at issue here. Since the expenditures were not expressly authorized, they were permissible only if reasonably necessary or incident to the proper execution of an authorized purpose or function of the agency. 71 Comp. Gen. 527 (1992). The application of the "necessary expense rule" is, in the first instance, a

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<sup>3</sup>VA asserts without explanation that these items were also used by Medical Center staff performing their day-to-day duties and in conjunction with the Medical Center's awards program.

<sup>4</sup>According to the IG's report, the Medical Center director asserted that the t-shirts purchased for the competition were also used throughout the year in connection with various awards programs.

matter of agency discretion. However, agencies do not have unfettered discretion. Therefore, when we review an expenditure to determine whether it falls within an authorized purpose or function, we consider whether, under the circumstances, the relationship between the authorized function and the expenditure is so attenuated as to take it beyond the agency's legitimate range of discretion. B-257488, Nov. 6, 1995.

#### Expenditures for Recruitment

Under the "necessary expense rule," an agency may purchase items in the nature of gifts or souvenirs only where there is a direct link between the items and the purpose of the appropriation to be charged. In B-234241, May 3, 1989, and B-230062, Dec. 22, 1988, we found such a direct link. Those cases involved the Army's purchase of framed recruiting posters for distribution as prizes at national conventions of medical professionals and student organizations. We observed in those cases that the Army was statutorily required to "conduct an intensive recruiting campaign . . . ." Further, the Army used the posters to induce convention attendees to provide recruiters with personal information and thus facilitated the Army's recruiting efforts. Therefore, the Army's expenditure was directly related to the accomplishment of its statutory mandate. In contrast, in B-236763, Jan. 10, 1990, we addressed a proposal to distribute pen and pencil sets at job fairs as favorable reminders of the agency. The pen and pencil sets could not have served as a means of advertising since they would have been presented only to those already in attendance at the job fairs and they could not otherwise be justified as a "necessary expense." See also B-260260, Dec. 28, 1995 (Department of Energy's purchase of baseball caps for personnel recruitment purposes not authorized given the absence of a direct relationship between the purchase and the Department's recruiting efforts).

The record contains no suggestion that the shoelaces, pens, and scissors distributed to potential employees served as anything other than favorable reminders of VA. Unlike the posters at issue in B-234241 and B-230062, the items at issue here did not facilitate VA's acquisition of information necessary to its recruiting efforts. Nor did they provide recipients with essential information about VA or the Medical Center not commonly available. Cf. 62 Comp. Gen. 566 (1983) (approving the Army's purchase of wall calendars containing information about the services provided by the Chaplain's Office and Army Community Services for military personnel and their families). Rather, the shoelaces, pens, and scissors contained only a slogan or logo to remind the recipient of his or her contact with the VA recruiters. Finally, the record contains no evidence that, like the situation in B-247563.2, May 12, 1993, VA needed to use promotional items to advertise the nurse recruiter's availability to attract potential employees. To the contrary, like the situation in B-236763, the availability of VA recruiters was likely known among students interested in medical careers at the colleges where VA maintained adjunct facilities and the availability of

promotional items likely had little discernable effect on the VA's ability to attract prospective employees.

Similarly, the Medical Center's purchase of patches for the local Explorers Post was not authorized under the "necessary expense rule." The Explorers Program is an affiliate of the Boy Scouts. However, the record contains no evidence of a relationship between the Medical Center's purchase of patches for young people involved in the Explorers Program and legitimate recruiting efforts.

Congress has acknowledged VA's need for explicit authority to purchase items like those at issue here in light of the "necessary expense rule" applied in our prior decisions. Section 203 of the Veterans Medical Program Amendments of 1992, Pub. L. No. 102-405, 106 Stat. 1983, 1984 (1992), added subsection (f) to 38 U.S.C. § 7423, authorizing VA to "purchase promotional items of nominal value for use in the recruitment of [health care personnel]." Considering the provision that became section 203, the House Committee on Veterans' Affairs observed that VA needed specific authority to purchase promotional items in light of our decisions and those of VA's General Counsel. See H.R. Rep. No. 130, 102d Cong., 1st Sess. 13-14 (1991) (discussing section 203 of H.R. 2280, the Veterans' Health Care and Research Amendments of 1991, which was ultimately passed as part of the 1992 legislation). Thus, Congress recognized that the purchases at issue here were neither explicitly nor implicitly authorized when they were made.<sup>5</sup>

#### Contest-Related Expenditures

Agencies are authorized to sponsor contests and provide prizes under the "necessary expense rule" when the expenditures for the contest bear a reasonable relationship to carrying out an authorized activity. E.g., 70 Comp. Gen. 720 (1991) (approving a proposal to pay cash prizes to selected fishermen providing needed

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<sup>5</sup>The items distributed would appear impermissible under VA's guidance implementing 38 U.S.C. § 7423(f). The guidance provides as follows:

"To serve as a recruitment aid, the item will include a permanent display of:

"The Department's VA logo and/or the name of either the Department or VHA facility purchasing the item.

"A telephone number and/or address to provide potential applicants with a VA point of contact for recruitment followup; and space permitting, a recruitment slogan or message."

MP-4, Part V, Change 206, § 3A.13.1a(3).

information to the National Oceanic and Atmospheric Administration). Federal agencies and employees, like all Americans, were encouraged by the President to observe Women's Equality Day<sup>6</sup> with appropriate programs, ceremonies, and activities. See 26 Weekly Comp. Pres. Doc. 1253 (August 14, 1990). However, in its submission and in response to our subsequent requests for information, Medical Center officials have failed to establish how awarding three gift certificates to local restaurants and a silk plant in connection with a contest advanced its celebration of Women's Equality Week. Given the Medical Center's failure to explain the relationship of these gifts to its observation of Women's Equality Week, we have no basis to conclude that the Medical Center's purchases of these contest prizes was a reasonable exercise of its discretion under the "necessary expense rule."

The Medical Center's three expenditures incident to the Corporate Challenge were also clearly unauthorized under our decisions. An agency may only use appropriated funds to pay a contest entry fee where the agency's participation in the contest will further the purposes of its appropriation. See, e.g., B-164467, Aug. 9, 1971 (approving the Bureau of Mines' use of appropriated funds to enter a Bureau film in an annual film contest on the grounds that a winning film would broaden public awareness of mine safety issues consistent with the Bureau's mission).

In B-256194, June 1, 1994, we considered the Department of Energy's expenditure of appropriated funds for registration fees of employees participating in a local athletic event. We concluded that competitive fitness events are essentially personal activities and that the costs of such activities must be borne by the participants. The athletic event in which Medical Center employees participated was virtually indistinguishable from the contest at issue in B-256194. Therefore, the expenses incurred by the Medical Center incident to the Corporate Challenge, i.e., the sponsor fee, t-shirts, and tent rental, were also personal to the participants. Accordingly, despite its assertions that the expenditures were for advertising and morale enhancement, the Medical Center was not authorized to use appropriated funds for those expenses.

#### Liability of VA officials

VA has asked that we indicate "what type of accountability applies" to various agency officials when improper payments are made."<sup>7</sup> Ordinarily, an agency is not

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<sup>6</sup>The Medical Center's observation of Women's Equality Week was presumably an outgrowth of the national observation of Women's Equality Day.

<sup>7</sup>VA uses the word "accountability" to refer to pecuniary liability and the phrase (continued...)

authorized to assess pecuniary liability against its officials for losses resulting from errors in judgment unless a statute provides for such liability or the agency has issued administrative regulations specifically providing for such liability.

65 Comp. Gen. 177 (1986); B-241856.2, Sept. 23, 1992. We know of no such statute or regulations applicable to VA employees.

In contrast, officials designated as accountable officers are financially liable for losses and improper payments of public funds. Specifically, certifying officers are liable to the United States for the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by them, as well as for any payment prohibited by law or which does not represent a legal obligation under the appropriation or fund involved. 31 U.S.C. § 3528(a)(4). Disbursing officers, including cashiers, are responsible for examining vouchers to verify their propriety, and are liable to the United States for illegal, improper, or incorrect payments, as well as for physical losses of government funds. 31 U.S.C. §§ 3325(a)(2), 3527. This Office is authorized to relieve certifying and disbursing officers from liability for improper payments when applicable criteria are met. See 31 U.S.C. §§ 3527, 3528(b).

Authorized certifying officers located at VA automated finance centers rely on the integrity of the automated payment system as a whole and do not physically examine hard copy payment documentation (vouchers) in each and every case. Although the use of an automated payment system does not alter the basic concepts of accountability for certifying officers, the reasonableness of a certifying officer's reliance on an automated payment system to continually produce legal and accurate payments is a factor that we consider when addressing the officer's liability for illegal or improper payments. 69 Comp. Gen. 85 (1989). Further, we have set forth criteria that agencies whose certifying officers rely on automated payment systems should satisfy. Specifically, certifying officers should be provided with information showing that the system on which they rely is functioning properly and reviews should be made at least annually to determine that the automated system is operating effectively and can be relied upon to make accurate and legal payments. Id.

VA's certifying officers necessarily rely on various participants in the procurement and payment process to ensure that only legal and accurate payments are made. However, these officials, including contracting officers and voucher auditors, do not become certifying officers subject to liability for improper payments merely because

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<sup>7</sup>(...continued)

"improper payment" to refer to expenditures that are impermissible under statutes, regulations, and decisions of this Office regarding the purposes for which appropriated funds may be used.

certifying officers rely on their review or approval of purchases or payments. See B-201965, June 15, 1982 (explaining that officials who negligently authorize erroneous transactions under an automated payment system are not liable as certifying officers for erroneous payments). Therefore, while officials other than certifying officers may be subject to administrative sanctions, our Office has never looked to them for reimbursement in cases of illegal or improper payments. See 55 Comp. Gen. 297 (1975); B-201965 at 4. Moreover, designation as a certifying officer requires a written authorization from the head of the agency.<sup>8</sup> See 31 U.S.C. § 3325; Treas. Financial Manual, vol. I, § 2040.30d (T. L. No. 496). Accordingly, unless the other officials have also been designated as certifying officers, only the authorized certifying officer is financially liable for illegal or improper payments.

Many of the expenditures questioned by the VA IG were made under the Department of the Treasury's (Treasury) "third party draft system." See 1 T.F.M. § 3040.70. Under this system, agencies obtain instruments known as third party drafts from contractors<sup>9</sup> and use them for the same types of purchases that they could make with imprest funds.<sup>10</sup> The contractors process the instruments as they are presented for payment by vendors of goods or services and subsequently provide agencies with listings of the cleared instruments, *i.e.*, those paid by a contractor's financial institution. Agencies then reimburse the contractors for payments made.

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<sup>8</sup>In response to the IG's report, the Medical Center updated the position descriptions for its voucher auditors to include the following statement:

"[A]s a certifying official, you are personally accountable and individually responsible for verifying that [f]ederal [g]overnment payments made under your jurisdiction are legal, proper, and correct. You are pecuniarily liable if any payment that you have certified is found to be illegal, improper, or incorrect."

The Department of the Treasury requires agencies to take additional action when designating employees as certifying officers, specifically the completion of a signature/designation card. See 1 T.F.M. § 2040.30d.

<sup>9</sup>Three contractors provide third party draft services to federal agencies. Two of the entities are themselves financial institutions and the third clears third party drafts under an arrangement with its financial institution.

<sup>10</sup>The 1995 modification to the Treasury Financial Manual expanded the use of third party drafts to purchases of up to \$10,000. See 1 T.F.M. § 3040.70(a) (T.L. No. 553, April 1995).

Like imprest fund purchases, purchases made with third party drafts may only be made by authorized officials and do not require prior certification by an authorized certifying officer. However, in contrast to imprest fund cashiers, issuers of third party drafts are not financially liable for improper purchases made with third party drafts since government funds are not disbursed when a third party draft is issued. 1 T.F.M. § 3040.70; GAO, Policy and Procedures Manual for Guidance of Federal Agencies, tit. 7, § 6.8 (T.S. No. 7-43, May 18, 1993). Rather, as the only accountable officers involved in the transactions, those who certify reimbursements to contractors are the only officials financially liable for improper payments. Further, Treasury's guidance requires agencies to reimburse third party draft contractors for the full amount of all properly payable instruments that have been paid and states that a "properly payable instrument" is one issued over the genuine signature of an authorized payment agent, bearing a genuine or authorized endorsement, and with no alterations. 1 T.F.M. § 3040.70(c). Therefore, Treasury's guidance advises agencies to "establish sufficient internal controls to permit the certifying officer to make prompt reimbursements while exercising reasonable diligence in reviewing the contractor's request for reimbursement." 1 T.F.M. § 3040.70(c).

The Medical Center's use of third party drafts for a number of questionable and unauthorized payments has led us to question how the use of third party drafts relates to the system of individual accountability critical to the protection of government funds. Third party drafts may be used for a variety of small purchases. Further, reimbursements required under the third party draft system may be automated. Authorized certifying officers may have little or no opportunity to question the legality of such reimbursements and the underlying purchases before payment is made. Rather, they must rely on others, particularly those authorized to issue third party drafts, to ensure that purchases are consistent with governing statutes, regulations, and decisions of this Office regarding the proper uses of appropriated funds. In our view, this division of responsibility and liability in connection with transactions amounting to constructive payments of government funds contravenes basic principles of accountability and poses an unacceptable risk to the safeguarding of those funds. Accordingly, we recommend that agencies designate individuals authorized to issue third party drafts as accountable officers or issue regulations under which such individuals would be financially liable for improper payments.

We now turn to VA's specific requests for relief. VA has identified an imprest funds clerk as the official who purchased the patches for the local Explorers Post and the three gift certificates and silk plant in connection with Women's Equality Week. As an imprest funds clerk, the individual issued third party drafts for each of those items. As discussed above, issuers of third party drafts are not accountable officers subject to financial liability for unauthorized purchases, unless otherwise so designated. Therefore, we need not consider VA's request for relief.

VA has also requested relief from liability for three officials involved in the three expenditures made for the Corporate Challenge: a visual information specialist and two voucher examiners. The visual information specialist designed and developed the t-shirts for contest participants. She also approved the purchase request and forwarded it to a purchasing agent. Payment was ultimately made through VA's finance center in Austin. While she clearly participated in the procurement of the t-shirts, the visual information specialist was not an accountable officer with respect to this unauthorized purchase. Therefore, she is not financially liable for the unauthorized use of appropriated funds and we need not grant her relief.

A voucher examiner reviewed the documents associated with the Medical Center's rental of a tent and another voucher examiner carried out the same function with respect to the sponsor fee paid in connection with the Corporate Challenge. Following their reviews, each "certified" invoices for the tent rental and sponsor fee for payment through the Austin center. We understand that as voucher examiners, both reviewed all payment documentation for the services received by the Medical Center incident to the Corporate Challenge and approved the payments. In this regard, their activities supported the certification ultimately made by an authorized certifying officer at the automated system level. Further, several documents included in VA's submission refer to their "certifications" or their role as "certifying officers." However, in response to our inquiries, VA advised that neither had been designated as a certifying officer. Consistent with the above discussion of liability of agency officials other than accountable officers, we conclude that neither is liable for the unauthorized expenditures of appropriated funds in connection with the Corporate Challenge. Accordingly, we need not consider VA's requests for relief.

VA requested relief from liability for seven Medical Center officials in connection with 52 of the Medical Center's 72 questionable expenditures<sup>11</sup> and we have addressed VA's request with respect to the expenditures made for the Explorers Program, Women's Equality Week, and the Corporate Challenge. However, these payments, as well as those for the shoelaces, pens, and scissors, were also approved by authorized certifying officers. Since VA's expenditures in connection with Women's Equality Week and the Corporate Challenge, as well as four of the eight recruiting-related expenditures, were improper and authorized certifying officers are strictly liable for improper payments, we now consider whether the relevant certifying officer(s) should be granted relief from liability.

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<sup>11</sup>VA's submission came in two parts. The first contained VA's requests for our views on 52 expenditures and relief for seven officials associated with those expenditures. The second contained VA's request for our views on 20 additional expenditures, but did not include any requests for relief.

This Office may relieve a certifying officer from liability for an improper payment where "the obligation was made in good faith; no law specifically prohibited the payment; and the United States Government received value for the payment." 31 U.S.C. § 3528(b)(1)(B). Under this criteria, we conclude that we may grant the relevant certifying officer(s) relief from liability for the improper payments discussed above.

We have previously observed that an important factor in determining whether a certifying officer acted in "good faith" is whether the certifying officer had, or reasonably should have had, doubt regarding the propriety of the payments. See, e.g., 70 Comp. Gen. 723 (1991). Whether the certifying officer reasonably should have been in doubt in any particular case depends on a weighing of all surrounding facts and circumstances. Id. at 726.

All of the improper payments at issue here, whether reimbursements for third party drafts or direct payments on invoices, were ultimately made by the finance center in Austin. As discussed previously, certifying officers at the Austin finance center were in no position to question individual expenditures made by the Oklahoma City Medical Center. Rather, they relied on reviews conducted by other VA officials, such as approving officials and voucher examiners. Although the record suggests that individuals serving in various capacities may have required additional training and may have made faulty judgments, it does not indicate that the system under which invoices were processed and payments were made was unreliable as a whole. Therefore, we cannot conclude that the certifying officer(s) should have had doubt about the propriety of the expenditures certified.

The certifying officer(s) in this case meet the second and third tests contained in 31 U.S.C. § 3528(b)(1)(B) as well. No statute specifically prohibited the expenditures at issue. See B-191900, July 21, 1978 (pointing out that this element refers to statutory prohibitions of payments for specific items or services). Finally, there is no suggestion in the record that the United States government did not receive value for the payments made by VA. Accordingly, we grant the certifying officer(s) who approved the payments at issue here relief from liability.

## CONCLUSION

VA's medical care appropriation was not available for several of the purchases identified in the IG's report on the Oklahoma City Medical Center. Since none of the officials specifically identified by VA in connection with the unauthorized expenditures were accountable officers, they are not liable for these payments. However, to enhance accountability and help safeguard public funds, VA should designate those authorized to issue third party drafts as accountable officers or

otherwise provide for financial liability for improper payments made with such instruments. Finally, relief is granted to the authorized certifying officer(s) who approved the payments.

/s/Robert P. Murphy  
for Comptroller General  
of the United States

## ATTACHMENT

## ATTACHMENT

## Recruitment - 8 expenditures

<u>PO#</u>	<u>Amount</u>	<u>Description</u>
A07539	936.00	Stick Matchbooks
A16327	2717.00	Balloons, ID Kits, Buttons
A17674	2961.50	Jar Grip Openers
IF1109	700.00	Booth at Oklahoma State Fair
A11050	575.00	Holiday Rope Pens
A13199	900.00	Folding Scissors
A15757	1032.10	Shoelaces with Logo
IF1217	275.11	Explorer Patches

Total - \$10,096.71

## Contests - 7 expenditures

<u>PO#</u>	<u>Amount</u>	<u>Description</u>
IF0351	20.00	Gift Certificate
IF0350	20.00	Gift Certificate
IF0349	20.00	Gift Certificate
IF0367	19.99	Silk Plant
A17378	814.60	T-shirts for Corporate Challenge
C16211	300.00	Tent Rental for Corporate Challenge
C15930	1200.00	Sponsor Fee for Corporate Challenge

Total- \$2,394.59