5.0 Requirements & Requirements Response

5.1 Administrative Requirements

5.1.1 Proposal Submission

The following section must be completed by two members of the Proposer’s Executive Team.

1) We affirm that the firm’s authorized representatives have read and understand all applicable Federal, State, and local election and information technology laws and regulations.

2) We affirm that the firm’s authorized representatives have read, understood, and agreed to comply with the requirements of New York State Election Law.

3) We affirm that the proposed voting system and functionality provided by the election management system and all voting devices shall comply with all provisions of Federal, State, and local election and information technology laws and regulations, and future modifications to those laws and regulations.

ES&S RESPONSE

ES&S will exercise all commercially reasonable efforts to make any technologically feasible modifications to its proprietary voting devices and election management system software as may be required in order to comply with applicable relevant federal, state and local election laws and regulations, including New York state voting system standards, as may be required in order to certify such voting system for use by the City of New York.

Specifically, during the warranty period and thereafter so long as the City is receiving ES&S Hardware Maintenance Services and ES&S Software Maintenance and Support Services, the equipment and licensed software shall be maintained or upgraded by ES&S in such a way as to remain compliant with all applicable state election laws and regulations, including all current and future requirements necessary to remain certified for use in the State of New York. "Maintained or upgraded" shall mean only such changes to individual items of the licensed software (but not equipment) as are technologically feasible and commercially reasonable. The City shall be responsible for the cost of all replacements, retrofits or modifications to the equipment purchased under this RFI. City shall also be responsible for (i) the cost of any third party items that ES&S notifies City are hereinafter required in order for the equipment and licensed software to remain compliant and certified, and (ii) City’s pro-rata share of the costs of any future state certifications or recertifications and any mandated modifications to the equipment and/or licensed software that may result therefrom that are not otherwise required as a result of any changes or modifications voluntarily made by ES&S to the licensed software or equipment licensed and sold hereunder.

4) We affirm that our proposed voting system response to this RFI is true and correct

5) We affirm that the proposed costs in our response to this RFI will be valid for contract for 120 days from proposal due date.

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<thead>
<tr>
<th>Proposal Submission Subcategories</th>
<th>Vendor Response</th>
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<tbody>
<tr>
<td>Describe actions the firm will take to keep the proposed voting system supplied to the BOE in NYC in compliance with all applicable election laws and regulations.</td>
<td>During the warranty period and thereafter so long as the City has paid for and is receiving ES&amp;S Hardware Maintenance Services and ES&amp;S Software Maintenance and Support Services, the equipment and licensed software shall be maintained or upgraded by</td>
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5.2 Voting System Design Requirements

As shown in the Glossary, BOE in NYC defines “Voting System” as the total combination of mechanical, electro-mechanical, or electronic equipment, and any ancillary equipment and all...
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<th>EMS Functionality Subcategories</th>
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<td>9) <strong>Recorded vs. Synthesized</strong> - What are the advantages and disadvantages of using recorded voice versus synthesized voice and what is the impact on the voting process?</td>
<td>The DS200 does not have an audio component.</td>
<td>Both recorded and synthesized speech have been used successfully in voting applications. Many jurisdictions prefer human recorded audio, perceiving that it is more pleasant to hear. The ballot is often recorded in two voices, one for instructions, and one for ballot content. Synthesized speech may be simpler to prepare, although phonics adjustments are usually required. All languages may not be available for synthesized speech.</td>
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10) **Setting PVS Parameters** – Detail the PVS parameters that may be changed through the EMS and the process to do so. (i.e. closing polls, over/under alerts, exception handling & messages, reporting) | The following parameters may be changed through the EMS for the DS200:  
- Allow reopen polls (yes or no).  
- Number of report tapes to print on close.  
- Number of zero tapes to print on open.  
- Poll or precinct level report.  
- Auto print audit log report on close (yes or no).  
- Media or summary (regular) report format.  
- Query, accept, or reject undervotes.  
- Query, accept, or reject overvotes. | Most of the characteristics listed here are characteristics usually associated with a tabulation device, not a ballot marking device. The ES&S AutoMARK will alert the voter if a contest is undervoted and will not allow a contest to be overvoted. Default system messages and election-specific messages can be changed by the user. In ElectionWare Configure the user can also change the following settings on the AutoMARK settings screen:  
- Alert the voter if not all contest choices are displayed on the screen.  
- Force the voter to view all contest choices. |
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<th>Pollworker Activity Subcategories</th>
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<td><strong>4) Activate for Voter</strong> – Describe the capabilities and procedures that demonstrate the ease with which the proposed Pollsite Voting System can be activated for each voter. What mechanism is used to activate the correct ballot for the voter?</td>
<td>The DS200 automatically activates when a voter inserts a marked paper ballot into the terminal's input slot. Messages on the LCD screen guide the voter through the process, and confirm that the ballot has been tabulated.</td>
<td>The ES&amp;S AutoMARK automatically activates when a voter inserts a blank paper ballot into the terminal’s input slot. A series of on screen and audio prompts guide the voter through ballot navigation and selections. After the voter completes ballot selections, the system summarizes selections and marks the voter's ballot.</td>
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<td><strong>5) Voter with Disability Readiness</strong> – Describe the capabilities of the proposed Pollsite Voting System that make it easy to place the machine into, and return back from, disability readiness for voter with special needs.</td>
<td>The ES&amp;S AutoMARK ballot marking device is designed to mark the ballot for voters with disabilities. After the disabled voter’s ballot is marked, the ballot is privately and independently transported by the voter to the DS200 for tabulation.</td>
<td>The ES&amp;S AutoMARK has only one system configuration. When placed on an optional ES&amp;S AutoMARK voting table or within the NYC transport cart, the system meets all HAVA and disability requirements for reach and accessibility.</td>
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<td><strong>6) Visual &amp; Audio Indications</strong> – Describe the capabilities of the proposed Pollsite Voting System that provide clear visual/audibly indication that the current ballot has been cast and the equipment is ready for the next voter.</td>
<td>When a voter inserts a ballot into the DS200, the terminal scans the entire ballot (front and back), interprets voter selections and accepts the ballot, adding votes to the system tally. A confirmation screen provides clear feedback to the voter that their ballot has been successfully tabulated.</td>
<td>After the ES&amp;S AutoMARK marks a ballot, the system emits an audible tone and displays a message instructing the voter to remove the marked ballot from the output slot or allow the AutoCast feature to drop the ballot out the back of the device into a secure container. The ES&amp;S system resets for voting almost instantaneously.</td>
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<td><strong>7) Read Error Messages</strong> – Describe the capabilities of the proposed Pollsite Voting System that provide error messages that are clear and understandable by the average inspector.</td>
<td>If there is an exception condition, such as undervotes, overvotes, crossover votes or ballot mismarks, the terminal displays a warning message on the terminal’s large text 12-inch LCD display and plays an audible alert. The DS200 then provides step-by-step instructions for resolving any ballot issue. The jurisdiction is responsible for determining the correct procedure for handling blank and/or overvoted ballots. These ballots can be predetermined to be returned to the voter or to be accepted into the unit without an alert message. Ballots returned to the voter can be removed.</td>
<td>The ES&amp;S AutoMARK includes built-in error detection features and provides correction methods. Error messages are displayed on the touch screen monitor when the ES&amp;S AutoMARK detects a critical condition that requires operator intervention to correct the problem before the voting process can be continued. A listing of error messages presented to the poll inspector and voter are found in Appendix D.1 and D.2.</td>
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<td>reviewed, replaced with a new ballot and revoted, or the voter may decide to keep the original ballot and condition and not make any changes. This process vastly dramatically reduces the number of invalid ballots cast during your election, ensuring that every ballot cast represents the voter’s intent. A listing of error messages presented to the poll inspector and voter are found in Appendix D.1 and D.2.</td>
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8) **Election Day Error Solutions** – Describe the capabilities of the proposed Pollsite Voting System that provide simple solutions for correcting Election Day errors. Distinguish between those correctable by Pollworkers and those that would require a Voting Machine Technician. 

- The DS200 is capable of displaying images, animation and video. This allows pollworkers to visually see solutions instead of just reading which might not be as clear. For example, a potential error message could be “Memory device not found”. The “Show Me” button provides a picture of the memory device being inserted into the proper location. Pollworkers can correct task-related errors. A voting machine technician should be called when an issue moves from task-related to component failure.
- The ES&S AutoMARK generates a full complement of error messages in audio and display format. ES&S’ training documentation offers preliminary troubleshooting steps which often resolve errors – including ballot jams, feed errors, memory card insertion errors, and so on. Functionality errors requiring the assistance of a technician are indicated by messages as well.

9) **Close Polls** – Describe the capabilities of the proposed Pollsite Voting System that provide easy to close (both physically and electronically) while still maintaining security. What device, if any is used in the process? 

- Once the polls are closed and voting has ended, the pollworker unlocks the access door, then presses and holds the **CLOSE POLLS** button for approximately 5 seconds. Once the **CLOSE POLLS** button is released, the DS200 will close the polls and automatically print a Voting Results Report and any other reports set up to automatically print, such as an Audit Log Report.
- Once the polls are closed, poll workers simply turn off the control key, unplug the unit. and close and seal the doors of the transport cart.

10) **Reporting** – Describe the capabilities of the proposed Pollsite Voting System that provide clear, readable reports for the Poll Worker.

- The DS200 generates a variety of results reports after the polls close. Depending on the options configured for your election definition, the scanner may automatically print reports when you close the polls. Or you can manually select reports from the **POLLS CLOSED** screen.
- The ES&S AutoMARK does not tabulate results and is not configured to print automatic reports. Election officials can print the system event log and scan log from the unit’s administration menus.
- All reports are printed in full.
### Voting Process Subcategories | Vendor Response Poll Site Scanner | Vendor Response Ballot Marking Device
--- | --- | ---

Voter selections and either accepts the ballot, adding votes to the system tally; or identifies and alerts the voter to any exception condition (undervotes, overvotes, crossover votes or ballot mismarks) with large, easy-to-read system messages and audible alerts. The DS200 provides instructions for resolving any ballot issue, vastly improving voter oversight and accountability and dramatically reducing the number of invalid ballots cast during your election.

#### 2) Over Voting & Under-voting
- Describe how the Pollsite Voting System prevents the voter from over voting and notifies the voter that they are under voting and how the voter can correct his or her ballot.

  a) Can the under-voting alert be configured to be turned-off?

  The DS200 can be programmed to stop and return ballots to voters who have made an error in marking their ballot. It can also be programmed to detect overvotes, undervotes, mismarked ballots and crossover ballots.

  When an incorrect ballot is fed into the DS200, the unit stops processing and emits an audible signal and displays a message describing the problem. It also activates two buttons: an ACCEPT button and a REJECT button.

  If the voter chooses to mark a new ballot, he/she or the poll official would press the RETURN BALLOT button, which sends the ballot out to be spoiled. If the voter chooses not to mark a new ballot, the COUNT AS MARKED button is pressed and the ballot is placed in the ballot box.

  The City of New York will be responsible for determining the correct procedure for handling blank and/or undervoted ballots. These ballots can be predetermined to be returned to the voter or to be accepted into the unit without an alert message. Ballots returned to the voter can be removed, reviewed, replaced with a new ballot and revoted, or the voter may decide to keep the original ballot and condition and not make any changes.

  The ES&S AutoMARK guards voters from selecting more than the allowed number of candidates or ballot options for a contest. System messages identify any contests where a voter marks fewer than the allowed number of selections.

#### 3) Independence
- Describe how the

  The DS200 allows for ballots to be

  The ES&S AutoMARK
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<td>Pollsite Voting System will allow voters with disabilities to completely cast their ballot independently and in privacy.</td>
<td>deposited utilizing a secrecy sleeve which completely covers the ballot for ultimate privacy.</td>
<td>records selections on the same paper ballot used by every voter at the polling place, ensuring privacy and anonymity during ballot counting. Voters who use the ES&amp;S AutoMARK’s large LCD display to select their ballot options, do so behind a standard privacy screen to prevent onlookers from viewing the ballot display. If a voter is using an audio ballot, the screen can be blanked to prevent onlookers from seeing the voter’s choices. Once the voter’s ballot is marked by the AutoMARK and returned to the voter, a privacy sleeve can be used by the voter to transport the completed ballot to the DS200 for tabulation at the precinct.</td>
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4) **Voter Verification** – Describe how the design of the voter verification feature makes it efficient to use.
   a) Does the voter review operate in such a manner that the jurisdiction can limit the time or cycles of review in order to ensure voter does not unduly slow the voting process.
   Voters using the DS200 can review all their choices on their paper ballots before inserting it into the DS200 for scanning. In the setup of the DS200 the NYC BOE will have the ability to set the reviewing criteria for the voters. For example, you can force a voter to view their overvote error before being able to cast ballot or you can allow them to cast their ballot right from the error notification screen. There is software provision in the AutoMARK to limit the time or cycles of review. Since this unit is primarily to support ADA voting, the extended time of a voting session will not slow the mainstream voting process since it does not require its use. The intrinsic time of a voting session, especially if voting by audio, will be longer than voting a paper ballot by hand and the review time will normally not be the primary contributor.

5) **Intuitive** – Describe how the proposed Pollsite Voting System would be familiar to NYC voters or easy for them to use.
   The ballot is designed to mimic the look and feel of a lever machine ballot, making it very familiar to NYC voters. The ballot can be inserted into the DS200 in any orientation so the voter cannot make an error in that regard. In addition, the screen runs animation to show where the ballot is inserted. Any error messages will be displayed in that voter’s language of choice. The ES&S AutoMARK touch screen follows the same operating principles as an ATM touch screen. Intuitive menus, dynamic selection highlighting and a comprehensive ballot summary provide voters the best possible environment to select desired candidates and ballot options without confusion.
Voting

Continued from page 1

The possibility that post-election litigation will result in hand counts of all votes raises "nightmare possibilities," said Martin Connor, who is handling the legal work for Sean Coffey, a class action securities lawyer at Bernstein, Litowitz, Berger & Grossman until leaving to seek the Democratic nomination for attorney general.

"It will all depend on the math, but in a close election where every vote counts, what's an acceptable error rate?" said Mr. Connor, a former state senator.

New York is one of the last states in the nation to abandon the mechanical lever machines it had used for 50 years. Last year, about 15 percent of the state's voters in 46 upstate counties voted during a pilot project in both the primary and general election. New York City voters, who are about 35 percent of the total of the state's registered voters, are being introduced to the new devices today.

The machines were required by the Help America Vote Act (HAVA), enacted in 2002, 42 USCA §15301 et seq., in the wake of the state's delayed for weeks the determination of a winner in the 2000 presidential race.

New York state did not enact legislation to implement the federal law until 2005, shortly before the state was sued by the U.S. Justice Department to compel it to comply with HAVA.

Douglas Kellner, co-chairman of the New York State Board of Elections, said the legislation adopted in New York and regulations issued by the state board went "far beyond" the safeguards mandated by HAVA.

For instance, he said, state law requires that local boards audit all votes cast on 3 percent of the machines within their jurisdiction.

New York's 25 remaining counties are using a machine manufactured by Dominion Voting, that is similar to the ESS200 in its technology and programming, according to election officials.

Both machines, like those used in the 13 Florida counties, warn a voter that they have voted for too many candidates and present two options: either press a green button in which case the vote will be "accepted" or a red button to get the ballot back.

By contrast, 38 counties in Florida used scanners that automatically reject ballots containing more votes than permitted.

The study concluded that voters in the Florida counties using the ESS200 were 14 times more likely to lose votes when they overvoted, said Mary K. Garber, director of research at the Florida Fair Elections Center.

Lawrence R. Nordgren, a Brennan Center attorney handling the challenge, said the Florida study makes it plain that the systems being used in New York will result in "lost votes" that were clearly mistakenly cast.

"Since the mistake can be easily remedied," he said, the state has an obligation to make sure that its voters are not disenfranchised.

Mr. Kellner, the co-chairman of the state elections board, said that although the machines should use clearer language to explain the issue of overvotes, the Brennan Center has blown the issue "way out of proportion."

He noted that the Brennan Center had been working with the board for four years on introducing the new machines in New York. Nonetheless, he said, the center only raised the overvote issue "recently when it was too late to make challenges on this year's ballot."

The state has not yet answered the Brennan Center's suit.

John Groh, a senior vice president at ESS, said the company's machines can be programmed to reject ballots containing overvotes, but whether to do so is a decision that must be made by the state and city boards of election.

Daniel Wise can be reached at dwise@aln.com.

Links to a video explaining how to use the new voting machines and the Brennan Center complaint are posted at nylj.com.