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June 27, 2008

Hon. Gary L. Sharpe
United States District Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, New York 12207

Re: *United States of America v New York State Board of Elections, et al.*
06-CV-0263 (GLS)

Dear Judge Sharpe:

We enclose the Defendant New York State Board of Elections' Weekly Status Report pursuant to your Order of January 16, 2008.

Respectfully submitted,

s/ _____
Allison M. Carr (513044)
Special Counsel

s/ _____
Paul M. Collins (101384)
Deputy Special Counsel

Attorneys for the New York State
Board of Elections and
Defendants Valentine and Zalen

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 6/20/08 – 6/26/08

Following is a detailed report concerning the previous week's progress in implementing the terms of the Court's Orders.

PLAN A

Overall Compliance Status Summary

Overall, activities and progress toward HAVA compliance are on schedule per the project timeline for Plan A.

Contracting with Voting System Vendors

Status of tasks in this category: *on schedule*

- OGS issued the contract termination letter to Avante this week.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- The weekly status meeting was held with SysTest Labs concerning progress of Plan A testing.
 - Plan A/Lot I Test planning and execution continued for Sequoia/Dominion.
 - The trusted build of the ICC code was successfully completed on 6/24/08. Hardware testing continued. Environmental testing is 30% complete. EMC testing is 90% complete. Safety evaluation testing is 25% complete.
 - The initial TDP documentation review was completed last week, as reported previously. There are currently 225 open documentation discrepancies.
 - Development of the Voting System Specific Test Cases continues, and is nearing completion.
 - The preliminary source code review against the 2005 VVSG standards is complete, as reported last week. Source code discrepancy fixes are approximately 67% complete, a 27% increase from last week due to the submission of new and updated code for discrepancy fixes. There are currently 220 open source code discrepancies.

- The total number of open discrepancies for Sequoia/Dominion (220 source code discrepancies, and 225 documentation discrepancies) continues to be identified by SysTest as a serious schedule risk, given the need for the vendor to address them and for SysTest to conduct regression testing of fixes within the timeline.
- The EMS code was delivered; ICP code was scheduled to be delivered by 6/26/08, but had not been received as of the writing of this report; and BMD (ITX) code is scheduled for delivery by 6/27/08. Builds will be initiated upon delivery and check-in by SysTest.
- Plan A/Lot I Test planning and execution continued for ES&S.
 - The build of the EDM and DSIM modules was completed on 6/20/08.
 - Testing of the test units for use on examining the portrait ballot issue (previously described) has not yet begun. ES&S will configure one of the Plan A/Lot I test units for use in this effort. (See related comments under “Plan B” section of this report.)
 - Hardware testing for ES&S continues to wait, as non-disclosure permissions to utilize previous test results currently labeled confidential remains extant. No additional hardware testing will be required, if SBOE approves the Evaluation of Prior Work (Deliverable #4).
 - As previously reported, the TDP documentation review is nearly complete, except for two documents which have still not been submitted by the vendor this week. There are 231 open documentation discrepancies at this time.
 - Development of the voting system specific test cases is in progress and reportedly nearing completion.
 - Preliminary source code review against the 2005 VVSG standards continued for ES&S, and is approximately 75% complete. This represents a 3% increase from last week’s percentage, due to the submission of updated code for discrepancy fixes. There are currently 969 open source code discrepancies for this vendor.
 - The total number of open discrepancies for ES&S (969 source code discrepancies, and 231 documentation discrepancies)

continues to be identified as a serious schedule risk, given the need for the vendor to address them and for SysTest to regression test fixes within the timeline.

- The Final PCA Documentation Traceability Matrix has still not been provided to SysTest by ES&S. A delivery date of 6/27/08 was set. SysTest notes that any significant changes to the documentation will pose a serious risk to the schedule.
- Daily discrepancy reports continue to be submitted to both SBOE and vendors.
- Initial versions of the Voting System-Specific Test Plans (Deliverable #7) for both Sequoia/Dominion and ES&S are reported by SysTest to be complete. Development of Voting System-Specific Test Cases continued. As individual test cases are completed, they are uploaded to the SharePoint portal for SBOE & NYSTEC review. SysTest's goal is to put a preliminary package together this week for detailed informal feedback by NYSTEC.
- SysTest continues to identify time and schedule as major constraints and risks. In response to critical decisions requested from SBOE (as indicated in last week's report) the following was addressed this week:
 - **Sequoia/Dominion's alternative suggestion for BMD testing as part of data accuracy testing.** SBOE agreed to the vendor's suggestion of scanning 5% and manually marking the remainder.
 - **Sequoia/Dominion's request to utilize a closed network as part of their system.** SBOE decided to stay with a stand-alone set-up, with possible consideration of authorization for a network after Plan A implementation. Among other obstacles, additional security procedures would need to be developed to ensure compensating controls and risk mitigation. More importantly, SysTest indicates that the changes required by the vendors request would significantly affect their testing plans and protocols, and could not be accomplished within the mandated timeline, even with the addition of extra staff.
 - **Sequoia/Dominion is submitting a central count scanner ("ImageCast Central Count") as part of the proposed network.** It is unclear whether or not this was indicated in their current Voting System Vendor Application for Certification as submitted to SBOE, due to phrasing on the application (use of the word "tabulator"). SysTest has requested clarification from

SBOE. SBOE views this as an absentee function, rather than a Plan A/Lot I system, and will follow up with the vendor.

- **SysTest has requested a decision from SBOE concerning the Sequoia/Dominion DCF file.** As part of the election setup (EMS), Dominion provides this file for use in creating elections. SBOE will follow up through discussion during a conference call with the vendor on 6/30/08. Standards would need to be developed, security practices outlined with SysTest, etc. if this request was to be honored.
- The weekly status meeting was held with NYSTEC concerning progress of Plan A activities.
 - NYSTEC has been comparing vendor discrepancy reports to the PCA documentation to validate SysTest findings.
 - NYSTEC continues to review draft copies of Voting System-Specific Test Plans and Test Cases developed by SysTest.
 - NYSTEC and SysTest held their standing weekly conference call to coordinate various work activities and exchange information.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- On 6/23/08 the Otsego County Board sent a letter to SBOE withdrawing from consideration as one of the potential participants in a demonstration project for Plan A/Lot I systems. This reduces the number of possible participant Counties to a partial, potential, one (Ulster County Board). Citing numerous concerns, including the lack of policy and procedure at the State and County level for a full roll-out of “still untested and uncertified scanners,” and their need to initiate poll worker training in the near future. Noting a continued enthusiastic support of the new voting system, the letter expressed concern that “this...election cycle should not be a testing ground for the yet uncertified machines and the unproven and appropriate mandatory hand counting that will follow.”

PLAN B

Overall Compliance Status Summary

Overall, activities and progress toward HAVA compliance are on schedule per the project timeline for Plan B.

Contracting with Voting System Vendors

Status of tasks in this category: *on schedule*

- OGS indicates that 4 County Boards still owe initial matching funds (Erie, Nassau, Orleans, and Suffolk). Dunning letters have been sent out on two occasions. Earlier in the week, Nassau County Board sent a notice that they are processing this through their channels.
- A total of 46 supply orders have been issued by OGS to date.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- Vendor deliveries and acceptance testing progressed at the central testing site this week. Thus far, Sequoia/Dominion has delivered a total of 1,929 units; ES&S has delivered 1,212.
- Sequoia/Dominion submitted an updated delivery schedule on 6/25/08. They claim that the gap in the delivery schedule is based on failures of subcontractors to deliver the necessary amounts of component parts for Sequoia to manufacture the machines. They state that they have been getting revised commitments from their suppliers to make sure that there is no further slippage in the schedule. The updated schedule reflects the "minimum" of what their supply chain has now committed to provide. It shows an escalating volume of deliveries beginning on 6/25/08 at 50 per day, and increasing at regular intervals, up to 150 per day 7/21/08 through 7/30/08, once they start obtaining larger numbers of component parts.
- The testing of the Plan B/Lot II modification from ES&S for the portrait ballot has not yet begun at SysTest. ES&S provided the source code and system change notes; created the functional test case and updated test case; and submitted the test election ballot to ES&S for printing, but has not yet received the test ballots back. Once ballots are received, testing will take 7 to 10 days. As reported last week, the NYC Board states that they are unable to accept their delivery until the fix enabling a portrait ballot has been made. (See related comments under the "Plan A" section of this report.) At the same time, ES&S identified a second option for resolving the issue by making a change to the AIMS system only. That change is being sent to NYC for

review. If the AIMS change works, then no firmware modification will be necessary.

- The weekly status meeting was held with NYSTEC concerning progress of Plan B tasks.
 - Revised test deck documentation is under review. ES&S test deck instructions (both comprehensive and standard versions) have been updated to reflect the AutoCast feature.
 - NYSTEC submitted a draft "Pre-Election Checklist" document for use by County Boards. It is currently under review by SBOE.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- NYSTEC submitted draft Excel spreadsheet samples for use as the near-term solution to statewide asset management needs. An internal meeting is scheduled for 6/27/08 to discuss.
- SBOE is still awaiting Sequoia's poll site survey checklist, which is currently being prepared. Once it is received, the SBOE will review it for use by the Counties.

HAVA COMPLAINT PROCESS

- A hearing was held on 6/25/08. Hearing Officers were Allison Carr and Paul Collins of the SBOE Special Counsel's Office. The hearing was completed and record closed, except respondent New York City was granted until close of business 6/27/08 to reply to one of the complainant's exhibits.