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July 7, 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 6/27/08 – 7/3/08

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 last week; the Plan A/Lot I contract will be terminated effective 8/6/08; Plan B/Lot II cannot be terminated unless Avante withdraws their system.

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 EMS and ICP code was completed successfully on 6/26/08.
 - Hardware testing progressed this week. Environmental testing is 60% complete. EMC testing is 100% complete. Safety evaluation testing is 50% complete.
 - Humidity, low temperature, and high temperature are complete.
 - Temperature and variation test began on 6/25/08, but due to a printer jam, had to be restarted. Test is being re-run.
 - Vibration, bench handling, and rain/dust are pending.
 - Battery backup in ImageCast was installed and safety testing will resume this week.
 - EMCI Testing is in process.

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- Immunity and radiated emissions testing are complete.
 - Conducted emissions was scheduled for 6/30/08; status pending.
- There are currently 204 open documentation discrepancies.
- Development of the Voting System-Specific Test Cases is considered complete and ready for formal submission to SBOE pending feedback from NYSTEC.
- The review of source code discrepancy fixes is approximately 70% complete. There are currently 321 open source code discrepancies per the most recent discrepancy report from SysTest on 7/3/08. (This increase in open discrepancies is due to the additional ICC code that was delivered recently.)
 - The Augmented Source Code review is approximately 5% complete. The use of automated tools will continue next week.
 - Builds of the BMD (ITX) code was re-scheduled, and is now slated to begin on 7/7/07.
- The total number of open discrepancies for Sequoia/Dominion (321 source code discrepancies, and 204 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.
- Documentation fixes to discrepancies for the initial PCA document review are being reviewed and updated as appropriate.
- Plan A/Lot I Test planning and execution continued for ES&S.
 - Hardware testing for ES&S continues to wait, as non-disclosure permissions to utilize previous test results currently labeled confidential remains extant. Once this matter is resolved, no further hardware testing will be required, as SBOE approved the Evaluation of Prior Work (Deliverable #4) on 7/2/08.
 - As previously reported, the TDP documentation review is still not complete, as two documents to be submitted by the vendor continue to remain pending. There are now 432 open

documentation discrepancies at this time. (This increase in open discrepancies is due to peer review findings that highlighted discrepancies which had been found but not yet entered into the discrepancy report.)

- Development of the Voting System-Specific Test cases for ES&S continued.
 - Preliminary source code review against the 2005 VVSG standards continued for ES&S, and is approximately 95% complete. There are currently 103 open source code discrepancies for this vendor, per the most recent discrepancy report from SysTest on 7/3/08.
 - The total number of open discrepancies for ES&S (103 source code discrepancies, and 432 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. ES&S has indicated to SysTest that it will be provided with the next TDP delivery.
 - PCA document reviewed are reported by SysTest as completed; peer reviews of the results are in progress.
 - AIMS code still has not been submitted for the source code review. It has been delivered as part of the TDP. SysTest reports that the source code review has not been able to start.
 - Training is expected to begin in Denver on 7/7/08.
 - Through recent discussion with SysTest, NYSTEC, and ES&S, SBOE has agreed to allow all 3 builds to occur in Omaha rather than Denver.
- Daily discrepancy reports continue to be submitted to both SBOE and both vendors. SysTest notes that vendors are reminded daily that the deadline for all documentation, source code, and functional fixes is 8/14/08. They continue to emphasize that the number of outstanding discrepancies poses a serious schedule risk.
 - SysTest has numerous outstanding requests to both vendors for various files, documentation, explanations, supplies and additional equipment.

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- Work on the Voting System-Specific Test Cases continued.
- SysTest continues to identify time and schedule as major constraints and risks.
- The weekly status meeting was held with NYSTEC concerning progress of Plan A activities.
 - NYSTEC has continued their effort of comparing vendor discrepancy reports to the PCA documentation to validate SysTest findings.
 - NYSTEC continues to review draft versions of Voting System-Specific Test Plans and Test Cases developed by SysTest. Additionally, a conference call was held this week on 7/2/08 to discuss most recent drafts.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- Nothing new to report this week.

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 reported that Erie, Nassau, Orleans, and Suffolk County Boards still have not remitted their required initial matching funds.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- Preparations continued at SysTest to support the additional testing requested to support portrait ballots. Actual testing of the Plan B/Lot II modification for the portrait ballot has still not begun. SysTest has received the source code and system change notes, created the functional test case, and updated their test case. A test election ballot was submitted to the vendor for printing, but test ballots have not yet been received.
- Vendor deliveries and acceptance testing progressed at the central testing site this week.
 - Thus far, Sequoia/Dominion has delivered a total of 2,230 units, under the latest delivery schedule provided to SBOE on 6/25/08. Generally, they have met their target for delivery, with slippage on only one day (-25). Paper jams are a continuing theme with this system, although the occurrences are a small percentage as compared to the volume of units being delivered for testing.
 - In response to concerns raised by the Nassau County Board, Commissioner Kellner requested for an independent audit of the acceptance testing process. NYSTEC was tasked with this effort, which will include review of written documents, tour and walk-through of the process at the warehouse, culminating in a written report assessing the situation. Target deadline for submission of the report is 7/11/08. As of the close of business on July 3, 2008, Nassau County Commissioners were unavailable for a conference call with SBOE. Efforts will be made on July 7th to schedule such a call to see what solutions present themselves.
 - ES&S has delivered a total of 1,500 units to the test site thus far and 943 have been tested as of July 2, 2008.

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- All units must successfully pass acceptance testing prior to being shipped to County Boards. Those failing testing are returned to the vendor, who may make adjustments on-site and then re-submit the unit, or who may remove the unit from the process altogether.
- 3,730 units have been delivered overall to the testing site, and are at varying stages of the process of testing and shipment to County Boards
- The weekly status meeting was held with NYSTEC concerning progress of Plan B tasks.
 - Test deck procedures continue to be refined, with updated versions submitted to SBOE as feedback is obtained.
 - An updated "*Room, Power, & Storage Guidelines*" procedural document for County Boards was submitted for SBOE review on 6/27/08.
 - SBOE decided that Sequoia/Dominion would not be permitted to submit a system using a closed network BMD, although it may be reviewed in the future. SBOE will follow up with the vendor to transmit this decision.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- A meeting on asset management was held on 6/27/08 to further refine the fields and structure of the spreadsheet template under development for County Boards. NYSTEC is revising the template, and will be providing it, along with an initial draft of the procedures for SBOE review. Once the short-term tool has been completed, work will resume on the requirements development for the long-term solution.

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. A determination is anticipated in time for the next Commissioners' Meeting on July 22nd.