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April 18, 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 04/11/08 – 4/17/08**

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*

- SBOE began drafting a letter to vendors concerning the replenishment of escrow accounts, in response to the Boards approval of a Resolution requiring all voting system vendors to increase the balance of their individual accounts to a \$750,000 level by 5/15/08.
- Image Base Systems (IBS) submitted the requisite \$5,000 check for deposit, along with a letter indicating their intention to re-bid for certification status. OGS has informed IBS that they will not review a resubmission until IBS has conducted a demo with SBOE.

**Testing, Certification, and Selection of Voting Systems & Devices**

Status of tasks in this category: *on schedule*

- The weekly SysTest status meeting was held to review progress with regard to Plan A.
  - SysTest indicates that development efforts have continued which expand the Requirements Matrix and Test Case Templates, pending formal feedback from SBOE on the submission of these deliverables. SysTest was apprised verbally by SBOE that it is likely additional work will be needed in order to view the documents as complete and formally accept them.
    - NYSTEC has been assigned to review these documents and provide comments for SBOE review and consideration by 4/23/08.
  - SysTest resources for the Technical Data Packet (TDP) document review have been assigned, and the team is currently

updating the review template, as well as evaluating prior documentation reviews from previous ITA engagements to determine which, if any, can be leveraged for the current effort.

- A conference call was held with counsel for Ciber relating to the outstanding invoices for work performed by Ciber. Ciber agreed to forward the detailed invoices which were promised last year. Those invoices are expected to arrive within the next two weeks. NYSBOE will then review the invoices and determine how to proceed.
- The weekly NYSTEC status meeting was held to review progress with regard to Plan A.
  - As noted previously in this report, NYSTEC staff was assigned to provide formal assessment of the Master Test Plan, TDP Test Plan, and Requirements Matrix deliverable.
  - The two contract extensions for NYSTEC (voting system project management support and independent security review) which were approved by the Board on 3/26/08 are currently under review by OGS and the Office of the State Comptroller.

**Delivery and Implementation of Voting Systems & Devices**

Status of tasks in this category: *on schedule*

- No updates this week relative to this category.

## **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*

- The collection of county match funding continues by OGS, who reports that payments have been received from 30 counties to date.
  - A “dunning notice” has been prepared to address instances of untimely or non-payment by counties, due on the established deadline of 4/18/08.

### **Testing, Certification, and Selection of Voting Systems & Devices**

Status of tasks in this category: *on schedule*

- The Board directed Counsel to obtain SysTest Plan B test reports and data; Counsel prepared a demand letter which was signed by the Co-Executive Directors and sent to SysTest.
- The weekly status meeting on progress with Plan B was held with NYSTEC.
  - Consistent with the established deliverable review process with SysTest, NYSTEC staff was assigned to provide formal assessment of the re-submitted Program Plan and related documents for Deliverable #1.
    - Reviewer comments include a recommendation that additional improvements should be made. This feedback was informally shared with SysTest, along with a request to engage in follow-up sessions with NYSTEC and re-submit the deliverable to SBOE by 4/30/08.
- The weekly status meeting on progress with Plan B was held with SysTest.
  - A hash-check of the Premier and ES&S BMD's are being executed this week.
  - SysTest is currently testing Sequoia/Dominion hardware and firmware modifications. They report that initial testing of the modifications is complete and the modifications are functioning properly. Regression

testing is in process to confirm that issues being discovered in the new system were not pre-existing in the system which has already received SBOE interim certification. At this juncture, that does not appear to be the case. Discrepancy reports are submitted to SBOE and the vendor on an ongoing basis.

- On 4/16/08 Premier submitted its performance bond per the terms of the contract.
- On 4/16/08 OGS sent correspondence to Liberty reminding them of the notice of defect letter sent on 4/4/08 and advising Liberty that if they do not submit a performance bond by 5/5/08, Liberty's contract will be cancelled pursuant to ¶ 59 of Appendix B which allows 30 days to cure defects.
- SBOE's Single-site Acceptance Testing of BMD's continued this week.
  - NYSTEC's ongoing development of test decks and related instructions for the acceptance testing process continued, with an updated version for the Premier AutoMark being submitted to SBOE for review this week. Additional refinements to various steps in the overall acceptance testing process continue to be created as actual testing progresses.
  - Sequoia/Dominion deliveries for SBOE acceptance testing have lagged, as they struggle to overcome supply chain obstacles. They have been challenged in meeting their latest delivery schedule. SBOE's assessment indicates that the overall timeline is not in jeopardy, although there will be concerns if such problems in delivery for acceptance testing are not remedied within the next few weeks. It appears that the current lag can be compensated for, while remaining within the timeline dates, through the recalibration of temporary staffing resources. A 4/22/08 meeting between SBOE and Sequoia has been scheduled on this matter.
    - Since the initiation of acceptance testing on 4/3/08, a total of 69 out of a scheduled 1,540 BMD's have been received, completed acceptance testing, and were shipped out to County Boards or are awaiting vendor pickup for same.

### **Delivery and Implementation of Voting Systems & Devices**

Status of tasks in this category: *on schedule*

- OGS is beginning to issue supply and services orders as County Boards provide the necessary purchase order confirmations to them.