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May 9, 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 5/2/08 – 5/8/08

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*

A new firm, IBS Voting Systems has submitted several responses to the original IFB, and was deemed non-responsive each time. In order to resolve that status, the firm was invited to stage a demonstration of their system, which was conducted on May 3. The vendor was advised that the system does not meet the requirements of New York's statutes and regulations.

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 on Plan A testing.
 - SysTest has completed the assessment of previous hardware testing for the Sequoia/Dominion system, and informed SBOE that there is no previous testing that can be leveraged for Plan A purposes.
 - Hardware Test Plans for Dominion and ES&S are on track for submission by 5/15/08.
 - The PCA document review team completed evaluation of prior documentation reviews from previous SysTest engagements.
 - SysTest indicates that they are on track for submission of Vendor-Specific Test Plans for Dominion and ES&S by 5/20/08.
 - Testing of Premier systems remains suspended. SBOE met with representatives from Premier this week to resolve outstanding issues. Premier indicates that they have worked extensively with SysTest in the past, and they seek SBOE permission to meet and discuss

previous test results for possible re-use in New York State certification. SBOE and SysTest have agreed to a meeting, scheduled for 5/13/08 in Denver, CO. SBOE will be represented at the meeting.

- SysTest has expressed concern about the need to resume testing quickly, in order to avoid jeopardizing the timeline for completion. Premier appears to believe that the testing cycle could be shortened, based on previous testing results.

SysTest has begun a preliminary evaluation of prior source code reviews that were executed by SysTest, for possible re-use in Plan A testing.

- The weekly status meeting was held with NYSTEC concerning progress on Plan A activities.
 - NYSTEC and SysTest received SBOE approval to begin weekly meetings to review timeline tasks and deadlines in a separate session, with the goal of developing a combined timeline incorporating the SysTest Integrated Master Program Plan (which includes their project plan) into the court-mandated timelines. Feedback from the review of the SysTest Master Program Plan deliverable (including a modified Quality Management Plan) has resulted in modifications to the Plan and associated documents. NYSTEC was asked to informally assess the revised Quality Management Plan, with a response to SBOE and SysTest by 5/9/08. Informal feedback indicates that the revised deliverable documents appear appropriate for acceptance.
 - Contract extensions for NYSTEC (voting system project management support and independent security review) which were approved by the Board on 3/26/08, finished review by OGS, received SBOE Co-Executive Directors authorization on 5/2/08, and were submitted to the Office of the State Comptroller for approval this week. A request for approval by the New York State Office for Technology was submitted on 5/1/08. NYSTEC continues working “at risk.”

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*

OGS has delivered a letter to Liberty Election Systems, terminating their contract.

- OGS issued a new Purchase Order to Sequoia for Hamilton County, in response to the withdrawal from certification by Liberty Election Systems
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- As of May 8, 2008 forty-five (45) counties have submitted their matching funds for their BMD orders. At this time, SBOE is working with OGS to prepare a resolution requesting that OSC take funds from the recalcitrant counties' state aid to cover the costs of the 5% matching funds that have gone unpaid.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- BMD Acceptance Testing continued at the central test site. Based on input received from County Board personnel at last week's conference, additional changes are being made to acceptance testing procedural documents. Process refinements also continued on test deck instructions. Daily Sequoia/Dominion deliveries continue, consistent with the most recent schedule provided.
- Efforts proceeded to establish a comprehensive and coordinated statewide asset management function in the long term, and a viable low-technology solution for use in the short term. NYSTEC analyzed relevant minimum federal inventory requirements, and provided this information to SBOE this week, as another step in requirements definition.
- The weekly status meeting was held with SysTest Labs concerning progress on Plan B testing.
 - Premier systems were updated with the correct version of Windows CE at SysTest this week. A hash check was executed and values were forwarded to SBOE.
 - SysTest completed regression testing of the upgraded Premier system to verify that the system still functions properly with the new operating system. No discrepancies or anomalies were discovered.

The Final Test Report for Premier was updated and forwarded to SBOE for review and approval on 5/7/08.

- Discussions concerning proprietary and confidential designations by SysTest concluded in a scheduled conference call meeting on the afternoon of 5/2/08. This matter is now resolved to SBOE satisfaction.
- SBOE advised SysTest informally that Plan B test cases and test results (Deliverable #8) will be accepted. Formal acceptance documentation is being prepared at this time.

- SysTest is preparing a final accounting of the testing costs incurred by Liberty and will provide that shortly.

- Testing of Sequoia/Dominion hardware and firmware modifications continued this week and discrepancies were once again identified to SBOE and the vendor. The testing of the modifications and the execution of regression test case is complete.
 - Source code updates and firmware remain pending from the vendor, and are necessary to close out the remaining discrepancies. Dominion had advised SysTest that all discrepancy fixes would be delivered by c.o.b. 5/7/08.
 - ◇ SysTest reported that final discrepancy fixes from Dominion were received at 6:15 PM Mountain Time on 5/9/08. Assuming no other problems are discovered with the system, they expect that regression testing and verification will occur on 5/8/08, and a formal report back to SBOE will be provided on 5/13/08.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- OGS has issued thirty-four (34) supply and services orders to date. An additional three (3) County Boards have confirmed, and orders are now in process for them. Eleven (11) County Board certifications remain pending at this time.

- Sequoia has requested another re-configuration of shipments, based on the level of readiness of individual County Boards to take, or not take, delivery of their orders. SBOE is willing to support this change.

NEW YORK STATE BOARD OF ELECTIONS

HAVA COMPLAINT PROCESS

- The Complainant delivered a copy of the complaint and other required documentation to the Respondent NYCBOE within the required time period and served proof of same to the NYSBOE. The Respondent must submit a written response to the NYSBOE and the Complainant, to be received by May 14, 2008.