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May 23, 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 5/16/08 – 5/22/08

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*

- Premier has withdrawn from Plan A/Lot I testing and at its direction SysTest is no longer testing its system.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 on Plan A testing.
    - The Hardware Test Planning for Dominion has been completed.
        - The Hardware Test Planning for ES&S is now slated toward 5/23/08, as SysTest is waiting for the rain and dust test report and results from testing conducted for the State of Florida.
    - The PCA documentation review has advanced.
        - Preliminary PCA Source Code Review to 2005 VVSG standards is in progress.
    - Internal reviews and modifications of the Voting System Specific Test Plans (Deliverable #7) have continued, and are reported as nearing completion, with a revised goal of formal submission to SBOE by 5/23/08.
    - SysTest completed their evaluation of prior ITA testing, and formally submitted their assessment to SBOE (Deliverable #4).
        - NYSTEC will be assigned to provide a formal review.

- Weekly meetings with Sequoia/Dominion are being initiated by SysTest in an effort to heighten communications and support the overall certification process.

- SysTest is waiting for Sequoia/Dominion and ES&S to provide updates to their TDP packages; both are expected next week.

- NYSTEC has requested that data accuracy testing in the environmental hardware chamber be performed as part of the run-for-record test. SysTest plans to accomplish this request by executing the data accuracy test in the lab to 27,000 ballot positions.

    - As part of the run-for record, the voting system will be subjected to 48 consecutive hours in the hardware environmental chamber, processing an average of 100 ballots per hour, to satisfy both VVSG and SBOE requirements.

- Based on NYSTEC's formal review, SBOE accepted, with stipulations, the Final Master Test Plan (Deliverable #6) submitted by SysTest. Stipulations related to the dynamic nature of the Master Requirements Matrix and Plan A/Lot I test cases; as "living" documents, they are expected to undergo revisions and enhancements through the completion of Vendor Specific Test Plans (Deliverable #7).

- The weekly status meeting was held with NYSTEC concerning progress on Plan A activities.

    - NYSTEC has initiated weekly conference call meetings with SysTest to coordinate tasks so that the work progresses smoothly. Meetings are intended to assist in identifying potential issues and coordinate timeline tasks, ensuring mutual understanding of expectations and anticipated outcomes.

    - NYSTEC was assigned to review the latest SysTest submission of the Master Program Plan (Deliverable #1), and is scheduled to provide a formal response by 6/3/08.

    - NYSTEC is currently reviewing draft versions of an updated Requirements Matrix and Voting System Specific Test Plans provided by SysTest, and will continue to work collaboratively with SysTest as these documents progress.

    - Contract extensions for NYSTEC (voting system project management support and independent security review) remain pending.

- OGS is responding to questions and informational needs expressed by the Office of the State Comptroller.
- SBOE is responding to questions and informational needs arising from the New York State Office for Technology.
- 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*

- As previously indicated, Avante has requested a refund of monies deposited for certification testing, as they have withdrawn from the process; OGS is processing the refund.
- OGS has issued 37 supply and services orders to date. The vendor (Sequoia/Dominion) will be following up with those counties who have not yet submitted orders, in an effort to expedite the process.
- Premier has withdrawn form Lot 1 testing and Schenectady and Rockland counties have expressed a desire to replace Premier with ES&S. The third Premier county, Albany, has been informed by SBOE that a substitute system selection must be made by 5/29/08.
- OGS is confirming with ES&S its ability to absorb the additional units from Rockland and Schenectady in accordance with the delivery schedule. As soon as ES&S confirms, that information with be communicated.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- SBOE Acceptance Testing of BMD's proceeded at the central test site. Ongoing Sequoia/Dominion deliveries continued, consistent with the most recent schedule provided (48 units per day). Thus far, a total of 785 BMD's have been received at the site, and are undergoing or have already completed acceptance testing and are being shipped to County Boards.
    - During Acceptance Testing this week, ballots printed from the version of Sequoia/Dominion BMD authorized at the May Board meeting began exhibiting a combination of selection marks (an "X," a check-mark, a back-wards check-mark, and a smudging of the oval) on each ballot.

- After extensive discussions with the vendor and SysTest, it was determined that the problem is due to the newly-certified version of the system having included the wrong graphic library.

- In the near term, SBOE personnel will continue to conduct acceptance testing utilizing the software version currently interim certified by the Board.

    - Concurrently, SysTest is testing a newer version which includes the correct graphic library. It is expected this corrected software version can be voted on by the Board at the June meeting.

When the newly-certified version is available, new flash cards will be sent to County Boards, along with detailed procedures for applying this upgrade,

- NYSTEC support on the development and refinement of BMD test decks continues, along with corresponding instructions. Test deck instructions for County Boards are now being drafted.

- Hash checking procedures by County Boards are being reviewed; a number of issues have been identified and must be resolved before finalizing and distributing/implementing the process.

- The weekly status meeting was held with SysTest Labs concerning progress on Plan B testing.

    - SBOE formally acknowledged acceptance of the Plan B test cases and test results (Deliverable #8) submitted by SysTest.

- Oswego County Board shared a copy of the Access database that they are using for asset management of their voting equipment and peripherals. This is being reviewed by SBOE to determine usability as an interim statewide solution, pending a more comprehensive asset management system being procured and implemented. A meeting to continue discussion in this regard is scheduled for next week.

Delivery and Implementation of Voting Systems & Devices
Status of tasks in this category: *on schedule*

- No updates this week relative to this category.

HAVA COMPLAINT PROCESS

- No updates this week relative to this category.