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September 19, 2008

Honorable Gary L. Sharpe
United States District Court
for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, New York 12207

Re: *United States v. New York State Board of Elections, et al.*
Civil Action No. 06-CV-0263 (GLS)

Dear Judge Sharpe,

We enclose herewith Weekly Status Report of the Defendant New York State Board of Elections fo the week ending September 18, 2008.

Respectfully submitted,

s/_____
Kimberly A. Galvin (505011)

Special Counsel

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

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 9/12/08 – 9/18/08

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 in jeopardy per the project timeline for Plan A.

Contracting with Voting System Vendors

Status of tasks in this category: ***on schedule***

- Nothing new to report in this category this week.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: ***in jeopardy and behind schedule***

- Weekly status meetings were held with SysTest Labs and NYSTEC to review progress with regard to Plan A.
    - Overall progress of testing by SysTest:
        - Source code and augmented source code artifacts requested for review by NYSTEC have been uploaded to the SharePoint portal. Updated artifacts and test cases will be uploaded as modifications are made.
        - An updated time and cost estimate for the remainder of the Plan A/Lot I test effort was submitted to SBOE on 9/12/08. (Copy attached.) As the new estimate exceeds the original contract value, OGS is pursuing the necessity of processing a contract increase. SBOE issues regarding the latest (August 2008) SysTest invoice have delayed payment while concerns are discussed and addressed.
        - SysTest came to Albany to attend SBOE sessions on 9/16/08 & 9/17/08. Day-long meetings were held which included DOJ, the New York State Attorney General's Office, NYSTEC, and the voting system vendors. Topics included a review of the current timeline and options for moving forward.

- While in Albany, SysTest toured the SBOE central test site, to get a better idea of the layout and environmental requirements in preparation for the public "functional user testing" demonstration. This session will also be part of the run-for-the-record test pass. SysTest is currently preparing planning documents for review and discussion by SBOE.

- Initial test pass of functional testing continued for both vendors this week.

- The PCA Documentation Review for both vendors is complete, and the review of discrepancy fixes is in progress.

- The PCA Source Code Review and Augmented Source Code Reviews of discrepancy fixes continued for both vendors.

- Both vendors continue to carry a large amount of open discrepancies, which creates a timeline risk.

- Status of Sequoia/Dominion testing:

  - The initial pass of functional testing continued this week, with test cases currently being executed in parallel. In summary, the initial TDP documentation review is complete, and the team is reviewing documentation fixes. The initial manual source code review is complete and the team is reviewing discrepancy fixes and preparing for the next test pass. The initial source code review with automated tools is complete and the team is reviewing discrepancy fixes and preparing for the next test pass.

  - SysTest continues to identify as a risk the cumulative delays in creating the election definition. The ballot layout continues to impact the estimated time schedules.

    - SysTest is still struggling to create the ballot definition to print test ballots, primarily due to incomplete documentation. Currently SysTest is following the documentation line-by-line to verify requirements. They state that the initial test pass will extend beyond the originally estimated 8 weeks.

      - Note that <u>one</u> of the test cases is ready to print ballots and begin the process of voting the test election.

- SysTest has again identified as a risk the source code discrepancies (117 open); augmented source code discrepancies (70 open); documentation discrepancies (73); and, (60 open) functional discrepancies currently posed to the timeline by Sequoia/Dominion. Additional discrepancies are being discovered as functional testing progresses, further endangering timely completion of the schedule. This poses a schedule risk relative to the discrepancies being addressed by the vendor and the fixes regression tested by SysTest within the timeline.

- The ITA again stated that they continue to experience intermittent application workstation crashes on the test systems. This causes delays, as the application must be restarted or the system has to be re-booted.

    - This problem is also identified as a schedule risk, as the crashes are intermittent and cannot be recreated on demand.

- A request has been open since 8/25/08 for the vendor to withdraw all items from their TDP package that are not part of the Plan A/Lot I test effort (i.e., central count scanner documentation). The failure to comply with this request is now identified by SysTest as a schedule risk.

- One test case is being delayed due to an issue with ICP rejecting the ballot as invalid. The on-site vendor rep is researching this problem, which SysTest has identified as a schedule risk.

o Status of ES&S testing:

- The initial pass of functional testing continued this week, with test cases running in parallel. In summary, the initial TDP documentation review is complete, and the team is reviewing documentation fixes. The initial manual source code review is complete and the team is reviewing discrepancy fixes. The source code review with automated tools is continuing for the latest vendor code drops.

- SysTest again emphasized that vendor delays are impacting the estimated time schedule, and they are just beginning to vote and tabulate test elections, mostly due to incomplete documentation. They are following the documentation line-by-line to verify that requirements are being met. They stated

again that this delay, along with other issues and discrepancies, will extend the initial test pass beyond the original estimate of 8 weeks.

- SysTest has again this week identified the open discrepancies for this vendor as a schedule risk: 143 open documentation discrepancies; 165 open functional discrepancies; 3 open source code discrepancies, and 11 augmented source code discrepancies. Additional discrepancies are being discovered during functional testing, further endangering the testing schedule.

- As previously reported, SysTest has stated that the vendor is planning to deliver a new security profile and implement it as part of the regression test phase. The change is an external encrypted hard drive that the application and all data will be stored on, and is intended to satisfy the requirement to encrypt data on the server. During the SysTest visit this week, a meeting was held with SysTest, SBOE, NYSTEC, and the vendor. ES&S discussed their proposed solution and responded to questions. The vendor is to document the discrepancies that they believe will be satisfied by this proposed solution. Once received, SBOE, SysTest, & NYSTEC will review and make a determination as to the feasibility of it.

o Weekly conference call meetings between NYSTEC and SysTest continue relative to the testing effort.

o NYSTEC also continues to participate in weekly SysTest/vendor conference calls to discuss discrepancy reports and various testing issues.

- SysTest plans to start forwarding the latest vendor TDP's weekly for SBOE & NYSTEC review.

o In preparation for revising SBOE security policies to incorporate and address Plan A/Lot I systems, vendors have been asked to provide equipment for NYSTEC to analyze. ES&S set up their system this week; the request to Sequoia/Dominion remains outstanding.

- All (other) existing SBOE policies and procedures are being revisited to incorporate changes necessitated by the inclusion of Plan A/Lot I systems. Work on test deck documentation for Plan A/Lot I has begun.

o The development of State Acceptance Testing processes and plans has continued. Testing space has been secured, and Plan A/Lot I testing will

occur at the former central test site where BMD acceptance testing took place. Next steps include the creation of a staffing plan, which will be contingent upon a dry run in order to collect data relative to the time that it takes to test a single system.

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

- An internal meeting was held on 9/12/08 to continue work on the requirements definition for a long-term statewide asset management tool. NYSTEC is presently assessing the resultant list, and conducting additional research on reports used by the New York City Board's asset management system as examples for requirements discussions on report needs.

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***

Testing, Certification, and Selection of Voting Systems & Devices
Status of tasks in this category: ***on schedule***

- SBOE Legal has continued work to develop the source code escrow agreement with Iron Mountain.

- Nassau County Board remains the only Board that has not yet paid matching funds on their BMD order. They stated this week that they needed forms from the State; OGS has now completed and returned those forms.

Delivery and Implementation of Voting Systems & Devices
Status of tasks in this category: ***complete except for Nassau County Board***

- On 9/18/08 SBOE Co-executive Directors, at the direction of the Commissioners of the State Board, wrote the Commissioners of Elections for Warren and Chautauqua County Boards demanding that they provide the State Board, within 5 days, written assurance that all future elections would be held using at least one BMD in each poling place.

- Nassau County has made arrangements to accept the delivery of their remaining machines currently being held at an interim storage facility.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

- No new information in this regard this week.