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September 26, 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,

I enclose herewith Weekly Status Report of the Defendant New York State Board of Elections fo the week ending September 25, 2008.

Respectfully submitted,

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

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 9/19/08 – 9/25/08

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:
        - Documents from both vendors' TDP submissions have been uploaded to the SharePoint portal. New submissions will also be uploaded to the portal as they are received and checked in.
        - All test cases that are currently in-test for both vendors have been uploaded to the SharePoint portal. This information will be updated with the latest versions of all test cases every Friday, or whenever significant modifications have been made.
        - All open discrepancies for both vendors have been assigned a priority and severity impact rating.
        - Initial test pass of functional testing continued for both vendors this week.
        - SysTest has begun the development of a test plan for the public functional user testing demonstration to be conducted in Albany as part of the run-for-the-record test pass. It is also developing a list of required vendor equipment, so that vendors have sufficient time to prepare and deliver it.

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

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

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

o Status of Sequoia/Dominion testing:

- SysTest was able to report progress this week, as test elections for two of the test cases have been created and ballots printed. The team is currently voting the test elections and verifying the results.

- SysTest has again identified as a risk the source code discrepancies (117 open); documentation discrepancies (90 open); and, (67 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 and posing a schedule risk.

- SysTest continues to emphasize that the cumulative delays in functional testing continue to impact the estimated time schedule, and that the initial test pass will extend beyond the original 8 week estimate.

- Intermittent application workstation crashes on the test systems are still occurring in the test lab. 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.

        o The vendor reported that they have reviewed their source code and made modifications that they believe will alleviate system crashes. SysTest will continue to test and monitor.

- 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 continues to be identified by SysTest as a schedule risk.

- The vendor has had an open issue since 8/27/08 concerning the provision of a detailed readiness test as required by the VVSG. SysTest will forward a list of VVSG requirements that must be satisfied by the readiness test.

- SysTest highlights the following problems that delayed the forward progress of the test effort this week:

    - Issue with the number of the ballot which delayed one test case for three days. Several attempts were made by the vendor to diagnose and resolve the problem through documentation updates and the creation of an instructional video. The vendor's on-site representative discovered an important step that was still missing from both the documentation and the video. Discrepancies have been entered and testing has now resumed.

    - A hardware issue delayed one of the test cases for three days. The startup diagnostic of the BMD device failed. SysTest is currently waiting for the vendor to resolve this issue, and working with the Dominion rep to help trouble-shoot.

- Status of ES&S testing:

    - The initial pass of functional testing continued this week and SysTest was able to report progress. Test elections for three test cases have been voted and tallied. The team is currently validating the election results and central count reports, and entering new documentation and functional discrepancies.

    - SysTest stated that the cumulative delays in functional testing continue to impact the estimated time schedule and the initial test pass will extend beyond the original 8 week estimate.

    - This vendor has carried an open issue (since 8/27/08) concerning the provision of a detailed readiness test as required by the VVSG. SysTest will forward a list of VVSG requirements that must be satisfied by the readiness test.

    - SysTest has again this week identified the open discrepancies for this vendor as a schedule risk: 136 open documentation discrepancies; 142 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, the vendor plans 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 last week, a meeting was held in which the vendor discussed their proposed solution. They were to document the discrepancies that they believe would be satisfied by the proposed solution. They have since provided a list of 46 discrepancies that they contend will be closed by the new security profile. Both SysTest and NYSTEC have responded that they do not feel that any of the discrepancies can be closed by the exclusive adoption of the new profile.

- Weekly conference call meetings between NYSTEC and SysTest continue relative to the testing effort. Currently NYSTEC is working with SysTest to more accurately map all discrepancies to the proper VVSG/NYS requirements.

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

- 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 last week; the request to Sequoia/Dominion still 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. Draft Test Deck documentation for Plan A/Lot I was completed this week.

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

- NYSTEC is analyzing the requirements definition for a long-term statewide asset management tool, and conducting additional research. A request to the New York City Board for sample reports remains outstanding, with further meetings pending the provision of this information.

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. Internal adjustments to the draft agreement are now nearing completion.

- Nassau County Board continues to remain the only Board that has not yet paid matching funds on their BMD order.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category:

- Nassau County has accepted delivery of all machines, save for 12 damaged in shipping. An inquiry has been made to Sequoia as to whether those machines have already been replaced and at the time of the preparation of this Status Report, no answer has been received.

HAVA COMPLAINT PROCESS

McFeeley HAVA Complaint

- The New York City Board agreed to the meeting requested by SBOE, relative to technical requirements of NYSVoter and the interface with the City Board. Efforts are currently underway to schedule the meeting with the State Board requesting a meeting on October 1st.

NYC HAVA Complaint

Nothing to report this week.