State of New York
STATE BOARD OF ELECTIONS

James A. Walsh
Chair
Douglas A. Keller
Chair
Helena Moses Donohue
Commissioner
Evelyn J. Aquila
Commissioner

40 STEUBEN STREET
ALBANY, N.Y. 12207
Phone: 518/474-6367 Fax: 518/486-4546
website: www.elections.state.ny.us

Todd D. Valentine
Executive Director
Stanley L. Zalen
Executive Director
Allison M. Carr
Special Counsel
Paul M. Collins
Deputy Counsel

July 17, 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:

I enclose the Defendant New York State Board of Elections' Weekly Status Report for the week ending July 17, 2008.

Respectfully submitted,

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 7/11/08 – 7/17/08

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 and OGS are reconciling vendor escrow account figures in preparation for refunding the balance of Premier's deposit, and in response to a request for an update of expenditures from Sequoia/Dominion.

Testing, Certification, and Selection of Voting Systems & Devices

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

- Weekly status meetings were held with SysTest Labs and with NYSTEC concerning progress of Plan A testing.
    - NYSTEC continues to compare SysTest discrepancy reports to the PCA documentation, to validate the ITA's findings.
    - The Voting System-Specific Test Plans (Deliverable #7 of the contract) were formally submitted to SBOE on 7/17/08; SBOE assigned formal review responsibility to NYSTEC; NYSTEC provided a written report recommending acceptance of the deliverable.
    - NYSTEC continued its review of the Sequoia and ES&S draft test cases, which will be continually revised as testing begins and more complete instructions are developed, prior to the run-for-record.
    - SysTest continues to identify time and schedule as major constraints and risks to the successful completion of the project within the court mandated timeline. Their weekly status report notes that there is now only one month until the run-for-the-record test is initiated, and that there is a very high risk that the regression test pass will not be executed. They state that the initial test pass must begin immediately with all vendor discrepancies addressed as part of this test effort.

- SysTest also notes that numerous discrepancies are expected to be discovered during the augmented source code review and initial functional testing, as both vendors are submitting new applications that have not been previously tested, thus posing a serious risk that the vendors will be unable to address and fix discrepancies before the run-for-record test pass.

- Plan A/Lot I Test planning and execution continued for Sequoia/Dominion.

  - All trusted builds have been successfully completed.

  - Hardware testing continued this week. All Environmental tests are complete; currently resolving issues. Safety evaluation testing is 95% complete (all tests are complete; currently resolving issues).

  - There are currently 178 open documentation discrepancies. Discrepancy fixes have been received from the vendor and are being reviewed by SysTest.

  - There are currently 344 open source code discrepancies.

  - The review of source code discrepancy fixes is ongoing.

  - The total number of open discrepancies for Sequoia/Dominion (344 source code discrepancies, and 178 documentation discrepancies) continues to be identified by SysTest as a serious schedule risk. Daily discrepancy reports continue to be distributed to both SBOE & the vendor.

  - SysTest continues to express concern regarding how all files roll up into each application, and in some cases, how objects, components, and source files interact with each other. They are working closely with Dominion to obtain sufficient information and understanding in this area.

  - SBOE verbally informed SysTest that the Sequoia/Dominion Central Count System (ICC) will not be accepted as part of the Plan A/Lot I testing effort.

  - Sequoia/Dominion sent SBOE an informational document concerning the DCF file. In it they suggest that there are seven user-configurable options that they believe the County Boards will require access to change. A timely decision in this regard by SBOE is required, so that the relevant vendor- or system-

specific test cases can be modified and updated (as appropriate).

- SBOE provided a formal response to the vendors Request for Interpretation (RFI) concerning a closed network. SBOE will not accept a closed network as part of the current Plan A/Lot I testing, although the vendor is invited to revisit the issue at a future point in time. Sequoia/Dominion is currently evaluating the impact of this decision, including the necessity of updating relevant documentation.

- SysTest has requested that Sequoia/Dominion provide a mapping of class members to the buildable applications (code that is used to build each application). SysTest reports that the vendor is unable to identify a timeframe for the provision of this information, and states that the resultant delay impacts the test schedule for source code review.

- SysTest is waiting for Sequoia/Dominion to deliver updated information concerning the crypto algorithms for functional testing, which is impacting the development of the crypto test case.

- Plan A/Lot I Test planning and execution continued for ES&S.

  - All trusted builds have been successfully completed.

  - Hardware testing for ES&S is in progress.

    - Environmental testing is 90% complete (all tests are complete; currently resolving issues).

    - EMC testing is 100% complete.

    - Safety evaluation testing is 95% complete (all tests are complete; currently resolving issues).

  - There are currently 432 open documentation discrepancies. The initial PCA Review and Peer Review have been completed. Documentation discrepancies for the initial review are complete and delivered.

  - There are currently 11 open source code discrepancies for this vendor.

    - The Augmented Source Code Review continued.

- The total number of open discrepancies for ES&S (11 source code discrepancies, and 432 documentation discrepancies) continues to be identified as a serious schedule risk.
    - Daily discrepancy reports continue to be submitted to both SBOE and the vendor.
- Setup and configuration of the ES&S test labs is in progress. SysTest has received additional hardware from the vendor, to help mitigate the risk of not completing all tests within the scheduled timelines, but is still waiting for operating systems and software.
- SysTest notes that they are still waiting for ES&S to deliver the necessary compilers and other software required to conduct the augmented source code review with automated tools. The vendor has not committed to a delivery date. This issue poses a risk to the source code review schedule, and the ITA continues to work with the vendor to resolve it.
- The vendor has still not delivered their Final PCA Documentation Traceability Matrix, which was due to SysTest by 5/28/08. The delay impacts the TDP review process, and any significant changes to the documentation will pose a serious risk to the schedule.

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

- Nothing new to report in this category this week.

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***

- Despite dunning letters and other follow-up by SBOE & OGS, Erie and Orleans County Boards still have not remitted their required initial matching funds. Orleans indicates that their response is pending the return of their Treasurer.
- OGS has issued 48 supply orders to date.
- OGS is pursuing the possibility of putting privacy booths on contract. SBOE will need to provide specifications, and identify other related items that may be needed. OGS is researching contracts with other states.

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

- Vendor deliveries and acceptance testing progressed at the central testing site this week.

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

- This week, Sequoia/Dominion was scheduled to deliver 590 units; 443 were received, constituting a shortage of 147 for the week.
  - This effectively completed all scheduled deliveries to the County Boards of Warren, Essex, Clinton, Chautauqua, Fulton, Niagara, and Rensselaer.
    - Periodic paper jams continue to occur (6 units this week).
      - A total of 4,009 units were scheduled to be delivered by this week. 2,956 units have been received. The vendor is 1,053 units behind in overall deliveries.

- ES&S was not scheduled to deliver units this week, but shipped 634 to the test site.
    - This effectively completed all scheduled deliveries to the County Boards of: Albany, Schenectady, Rockland, Bronx, Queens, Brooklyn, Staten Island, and Manhattan.
        - A total of 2,488 units were scheduled to be delivered by this week. 2,106 units have been received. The vendor is 382 units behind in overall deliveries.
- In response to the issues raised by the Nassau County Board, Sequoia/Dominion indicates that it has stationed a technician permanently in Nassau from now through the election, and also has supplied other personnel to address machine issues on an as-needed basis.
    - The Nassau County Board's position is that it will not resume accepting machines in the absence of a remedial plan, which it advises Sequoia/Dominion has promised to file by 7/18/08. SBOE Counsel's staff continues to monitor the situation.
- Test deck training for County Boards remains a key discussion topic. It is possible that SBOE could use existing contracts to create a training video, and procurement options are being investigated by OGS.
- NYSTEC prepared a draft security policy document for review by SBOE.
- The independent audit of the acceptance testing process was completed, relative to the on-site visit conducted by NYSTEC on 7/8/08.
- Multiple activities are underway on the short-term asset management approach.
    - The asset management procedures are being revised, and "how to" instructions developed.
    - Spreadsheets are being populated with individual County Board inventory information, prior to releasing them for implementation by the individual Boards.

HAVA COMPLAINT PROCESS

- A decision will be presented to and reviewed by the Commissioners of the State Board at the next scheduled Board Meeting on 7/22/08.