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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 25, 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 July 24, 2008.

Respectfully submitted,

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

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 07/18/08 – 07/24/08

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*

- The Premier escrow account refund has been processed by OGS.
- A contract termination letter was sent to Avante. The Plan A/Lot I contract will be terminated as of 8/26/08. (The Plan B/Lot II contract cannot be terminated unless Avante withdraws.)

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.
- For the first time, and after affirmatively representing that the time line for certification testing could still be met as recently as July 17, 2008, the most recent weekly status meeting, on July 24, 2008 SysTest admitted that it was behind schedule and would not make the October 1, 2008 certification testing completion date.
- In the July 24, 2008 weekly status meeting SysTest announced that the vendors were not ready for testing at this point in time due to various issues, among them: documentation issues, testing machines supplied which did not function, lacked harddrives and or USB ports and therefore could not be tested. As of July 24, 2008 the timeline allowed only 16 days for the run for the record test by SysTest and when the Sequoia software was loaded up for a test pass, it crashed.
- Given the complexity of the testing involved, SysTest is now, for the first time, advising that upon receipt of fully functional machines and full documentation it will take a total of eighteen (18) weeks to complete the certification testing

with eight (8) weeks for the dry run, four (4) weeks for regression testing and six (6) weeks for the run for the record. This advice differs from the time line time frame wherein SysTest represented that it would accomplish the three testing runs in the ten (10) weeks between July 21 and October 1, 2008. This new time frame assumes that all of the discrepancies found in the dry run are cured and there are no problems with the regression testing which would delay the run for the record.

- Using this time line and affording SysTest two (2) weeks to create a final report and the State Board a week to approve same, even in a perfect scenario the certification of the Lot 1 machines would not occur in accordance with the time line. SysTest's response to this development, which it reported for the first time on July 24, 2008, was that it was not prepared for the amount of test planning and the complexity of the testing.

    - SysTest continues to refine test cases, and work closely with NYSTEC in this regard.

    - Status of Sequoia/Dominion testing:

        - The EMS trusted build is underway, and expected to be completed this week.

        - The augmented source code review continued this week.

        - Source code reviews of fixed discrepancies is ongoing.

        - The dcf file issue remains open.

        - Daily discrepancy reports from SysTest indicate that Sequoia/Dominion has a total of 355 open source code discrepancies and 86 open documentation discrepancies.

            - Dominion has provided additional documentation to fix discrepancies, and SysTest is in the process of reviewing it.

- In the July 24, 2008 weekly status meeting SysTest announced that this vendor was not ready for testing at this point in time due to various issues, among them: documentation issues, testing machines supplied which did not function, lacked hard drives and or USB ports and therefore could not be tested. As of July 24, 2008 the timeline allowed only 16 days for the run for the record test by SysTest and when the Sequoia software was loaded up for a test pass, it crashed.

Status of ES&S testing:

- Daily discrepancy reports from SysTest indicate that this vendor has 7 open source code discrepancies and 414 open documentation discrepancies.
- The augmented source code review continued this week to the extent possible, given the outstanding request for (3) compilers.
- Missing and/or malfunctioning equipment and/or peripherals from this vendor continue to be an issue.

- SysTest continues to identify time and schedule as major constraints and risks to the successful, timely, completion of the project.
- Initial discussion of functional testing began, which is targeted to follow the dry run by SysTest that is expected to be completed in early September.
- SysTest advised that ES&S will not supply appropriate documentation or functionality changes to allow the proper running of the units to SysTest until at least August 14, 2008 which would mean that testing would not be complete within the time frame of the time line

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*

- Orleans County Board has responded that a resolution for payment of county match funding was placed on the 7/23/08 agenda for the County Legislature meeting. Orleans Commissioners were advised that payment would be made within a few days thereafter.

- Suffolk County Board submitted their payment of county match funding to OGS.

- A total of 51 supply purchase orders have now been issued by OGS. Orders from Dutchess, Chautauqua County Boards are in process. Orders have not yet been requested by Hamilton, Nassau, Niagara, Rensselaer, and Schoharie County Boards.

    - OGS continues to provide periodic updates concerning the expenditure of Title I & II funds by County Boards.

- OGS is presently reviewing specifications for privacy booths and related items that may be beneficial to place on state contract.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- The weekly status meeting on progress with Plan B was held with NYSTEC.

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

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category:

- Acceptance Testing activities continued at the SBOE central test site.

    - During this reporting period, Sequoia/Dominion was scheduled to deliver 725 units; 394 were received, leaving a deficit of 331 for the period. Overall, this vendor is 1414 units behind in deliveries.

- Lewis and Niagara County Boards received the balance of their orders, as acceptance testing was completed and units were shipped out. Suffolk County Board received an additional 250 units, with a remaining balance due of 80 units to complete their order.

- A small incidence of paper jams (5 this week) continue to plague the acceptance testing process.

- Also during this period, ES&S was not scheduled for deliveries, although they were behind overall. 253 units were delivered this week. This vendor is now 129 units behind in deliveries.

- 300 units were shipped to Kings County and 406 to Queens County.

- Paper jams also arose with this system in 11 instances this week.

- OGS continues working with SBOE concerning procurement of public service announcements. Options are being discussed, and a meeting was arranged with the New York Public Broadcasters Association on 7/24/08. SBOE has developed a draft scope of work with objectives that include conveying information concerning changes to the voting/election process in New York State, and directing the public to the newly-developed online voter education portal (www.vote-ny.com), specifically with information about voting machines, processes, and voter access to the election process. Design and production of a single radio spot will be delivered at 4 different durations. The plan is to accomplish a procurement that will fill minimum needs for Fall 2008 elections, and go out to bid for a larger and more comprehensive advertising campaign for the 2009 elections.

- Test Deck policy and procedure documents for use by County Boards has been updated by NYSTEC to reflect the use of a primary ballot.

- County Board Test Deck training will be accomplished through production and release of a video. A scope statement has been drafted in an effort to utilize the existing contract with SOE Software, which is providing poll worker training services.

- NYSTEC continues updates to the (interim) asset management process and procedures. Spreadsheets populated with individual County Board inventory data is being released for implementation. Additional meetings to work on the permanent asset management solution and procurement will be scheduled beginning next week.

- NYSTEC submitted draft security policy language to SBOE, inclusive of BMD instructions. SBOE is reviewing.

- The escrow agreement with Iron Mountain remains pending. SBOE Special Counsel's Office to finalize.

HAVA COMPLAINT PROCESS

On July 22, 2008 the State Board unanimously adopted a resolution determining the McFeeley Compliant by sustaining portions of the Complaint which Resolution included the following remedy:

Accordingly, it is hereby directed that the New York City Board of Elections comply with the requirements of Section 303 of the Help America Vote Act by using the interactive features of the NYS Voter System in accordance with 9 NYCRR Part 6217 and that on or before August 20, 2008, it engage in appropriate file maintenance procedures so that the poll books printed for the September 9, 2008, primary election contain updated information including the elimination of duplicate voters based upon information made available through the NYS Voter System. Further the City Board must, on an ongoing basis, engage in all registration file maintenance procedures set forth in the New York State Election Law, including the full use of the NYSVoter interactive system pursuant to 9 NYCRR Part 6217 so that the state wide data base of registered voters might comply with the requirements of Election Law §5-614, 42 USC §15483 and the Remedial Order of the Northern District of June 2, 2006.

NASSAU COUNTY ISSUES:

Counsel for the State Board has been monitoring the situation and reporting to DOJ on the issue of the proposed resolutions. Sequoia has made a number of repairs and adjustments to the machines previously delivered to Nassau County and stationed a technician at the Nassau County Board of Elections through the election to deal with any ongoing problems. However as of the close of business on July 24, 2008, Nassau County had not indicated a willingness to resume accepting delivery of machines from Sequoia. Counsel for Nassau County indicated that the county was considering the issue and has not as yet responded to further requests for word on this issue.