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May 30, 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 5/23/08 – 5/29/08

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*

- No updates this week relative to this category.

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 of Plan A testing.
    - Draft versions of the Voting System Specific Test Plans (Deliverable #7) have been forwarded to SBOE for preliminary review, with final versions anticipated by the end of this week.
        - Hardware test planning for Plan A/Lot I is in progress. Test Plans for Sequoia/Dominion and ES&S have been completed, and incorporated into their respective Voting System Specific Test Plans. Scheduling of hardware and data accuracy testing by hardware test labs is currently in process.
    - SysTest formally submitted a "Request for Interpretation" (RFI) to SBOE concerning VVSG requirement 7.4.6.d, relative to COTS hardware and software available from sources other than the voting system vendor for performing the hash check.
        - Following an assessment and discussion with NYSTEC, SBOE informed SysTest that the proposed interpretation was too narrow, and did not fully actualize the intent of this requirement. Vendors will be notified of SBOE's position, and the RFI will be posted to the agency web site (HAVA page).

- Updates of TDP packages from Sequoia/Dominion and ES&S remain pending. Document review of existing TDP materials submitted by both vendors is approximately 60% complete at this time.

    - SysTest and Dominion have been experiencing some communications issues in regard to documentation, resulting in incomplete submissions. They appear to have identified the source(s) of confusion, and developed ways to address.

- SysTest reports that Dominion has still not clarified their hardware and software configuration for the Plan A/Lot I test effort. Multiple requests have been made of Dominion by SysTest in this regard. This poses a schedule risk for the training and trusted build that is planned to begin next week, as well as the development of the vendor-specific test cases. Configuration changes may also require modifications to the voting system specific test plan.

- Dominion will have a rep on-site at SysTest to provide product training for the test team next week.

- Daily discrepancy reports are submitted to both SBOE and vendors. SysTest reports that Sequoia/Dominion currently has 281 open source code discrepancies, and ES&S currently has 333 open source code discrepancies. Typically, for a VSTL testing engagement, all source code discrepancies must be resolved and closed prior to executing the initial trusted build and the continuation of any testing. This issue is becoming a concern, and was discussed at length.

    - Given the time constraints, SysTest recommended the execution of the initial build next week and moving forward with the SBOE source code review, knowing that the second phase of testing is slated to begin on July 23.

        - As there is a structured process for a total of 3 "builds" in all, SBOE has agreed to this recommendation, in the interests of time. Build deadlines were set as follows: 6/12/08; 7/23/08; and 8/20/08 ("run for record'). Builds will take place in Denver, at the SysTest Lab.

    - SBOE also plans to follow up with both vendors, to reinforce the expectation that all necessary updates, documentation, and fixes must be completed in a timely fashion, and that deadlines for builds (as noted above) will be enforced.

- ES&S reports that they will be unable to deliver full source code for the trusted build until June 23. ES&S suggested that SBOE accept an internal ES&S build of the application to begin testing.

    - SysTest does not recommend this action, but suggested that the source code for the Audit Manager and Election Data Manager be delivered to them for the initial build scheduled to begin next week. These are the first modules necessary for the creation of an election and will allow testing to continue while ES&S completes their source code and resolves discrepancies. SBOE agreed to this approach.

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

    - NYSTEC reviewed the latest SysTest submission of the Master Program Plan (Deliverable #1), and provided a formal recommendation to accept it.

        - SBOE concurred, and formally notified SysTest of acceptance. The Master Program Plan documents the overall project management approach, and includes the Communications and Quality Assurance Plans.

            - The Master Program Plan will be posted to the SBOE web site (HAVA pages).

    - NYSTEC continued work with SysTest concerning draft versions of an updated Requirements Matrix and Voting System Specific Test Plans.

    - NYSTEC's review of the SysTest evaluation of prior ITA testing (Deliverable #4) is underway. The deadline for formal response to SBOE is 6/6/08.

    - Contract extensions for NYSTEC (voting system project management support and independent security review) have been approved by the Office of the State Comptroller.

    - Sequoia has not as yet complied with the Board's requirement that all vendors replenish their escrow account for testing at a level of $750,000 in view of the fact that the original estimate for certification testing has been exceeded and state law (Election Law §7-201{1}) places the burden of paying for the testing upon the machine vendor. Sequoia currently has a balance of $340,000 in funding available for testing. Sequoia has proposed an installment plan which would

replenish their account to $750,000 by the end of June. The Board is reviewing its right of set off against the funds due Sequoia from the sale of BMDs to the counties to resolve this issue in view of Sequoia's noncompliance. The opinion of the Board's host agency for contracting purposes, OGS, is being sought on this issue.

Additionally, the precise costs incurred to date at SysTest and NYSTEC are being determined to ensure that there is no reason to suspend testing pursuant to the Board's Resolution which requires a suspension of testing if the costs actually incurred exceed the escrowed funds and put the Board 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*

- In response to SBOE follow-up with inactive vendors, Populex and Open Voting Solutions have withdrawn from the certification process, and requested a refund of escrow monies. SBOE and OGS are processing the necessary paperwork to close out their vendor accounts.

- OGS has issued 44 supply and services orders to date. The vendor (Sequoia/Dominion) is following up with those counties who have not yet submitted orders.

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. Thus far, a total of 1,021 BMD's have been received at the site, and are undergoing or have already completed acceptance testing and are being shipped to County Boards statewide.

    - As a result of changes in the Sequoia/Dominion unit (as reported last week), this vendor has committed to submitting a revised delivery schedule this week.

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

    - SysTest completed regression testing of the Dominion system, verifying that the system consistently marks the ballot by completely filling in the oval with a smudge (only). Ballots were compared to those produced during the original Plan B/Lot II testing in February, to ensure consistency. The Final Test Report is being modified to document the results of the testing and will be submitted to SBOE this week.

- An asset management meeting was held this week. The Oswego County Board version of an Access database that they are using for asset management was reviewed and discussed for its potential as an interim

(statewide) solution. The availability of and familiarity with Microsoft Access by individual County Boards may pose an obstacle for this option. A quick survey of all County Boards will be done to determine their individual status with regard to using Access. SBOE continues to seek both an interim (Plan B) and a long term asset management product for tracking assets and managing chain-of-custody data statewide.

  - Sequoia and Robis Elections, Inc. presented a demo of the "ask ED" asset management product to SBOE this week. This product is identified by Sequoia as a "vendor neutral" solution, which is not tied to Sequoia systems.

- The weekly status meeting was held with NYSTEC concerning progress of Plan B tasks.

  - Updated ES&S Test Deck Instructions and County Receipt Checklists were provided to SBOE by NYSTEC this week.

  - NYSTEC recommended the development of an overall combined project management plan, incorporating both Plan A & Plan B activities, as well as related tasks (including roll-out of the poll worker training). Sessions will begin next week to integrate all tasks and capture associated activities within a single project plan.

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.