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June 13, 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' Amended Weekly Status Report by reason of the fact that the original referenced the New York City landscape/portrait issue as having appeared in the Weekly Report of June 5, 2008. In fact the matter was discussed with the Department of Justice in the weekly telephone conference of June 6, 2008 but does not appear in the Weekly Report of June 5, 2008 filed with the Court. The Amended Weekly Report enclosed rectifies that error.

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 6/6/08 – 6/12/08
Amended June 13, 2008

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*

- Vendor Escrow Account refunds have been processed for Avante, Populex, Liberty, and Open Voting Solutions. Premier's request for a refund is being held, pending verification of all relevant SysTest expenses, which will not be known until the May invoice has been received.

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.
    - Hardware test execution for Sequoia/Dominion continued.
        - Hardware testing for ES&S still remains pending, as SysTest is waiting for their submission of non-disclosure permissions to utilize previous test results which are currently labeled confidential.
    - PCA Documentation Review continued for ES&S.
    - TDP document review continued for both vendors. Daily discrepancy reports continue to be submitted to both SBOE and vendors.
        - The Sequoia/Dominion review is approximately 95% complete. There are now 146 open documentation discrepancies for this vendor.
        - The ES&S review is approximately 90% complete. There are currently 147 open documentation discrepancies for this vendor.

- The number of open source code and documentation discrepancies for both Sequoia/Dominion and ES&S are identified as a schedule risk by SysTest, in that they need to be addressed by the vendors, and fixes regression tested, prior to the Run-For-The-Record start date of 8/20/08.

    - SysTest is continues to review source code discrepancy fixes; there are currently 267 open source code discrepancies for Sequoia/Dominion.

    - Preliminary source code review against the 2005 VVSG standards continued for ES&S, and is approximately 85% complete. There are currently 715 open source code discrepancies for this vendor.

- Development of Vendor-Specific Test Cases for Sequoia/Dominion continued to advance slowly due to confusion surrounding the configuration, incomplete documents, and document discrepancies. SysTest notes that they are working with Dominion to understand the configuration, but that it does not match the application for certification submitted to SBOE. SysTest also states that ongoing configuration changes and modifications pose a serious schedule risk to the creation of Vendor-Specific Test Cases, modifications to the Vendor-Specific Test Plan, and test execution, within the timeline provided to the court.

- Vendor Specific Test Cases for ES&S continued in development.

- SysTest indicated that the ES&S ElectionWare and DSIM are both new applications that have not been tested or certified before the Lot I test effort, which poses a risk of many discrepancies and anomalies discovered during system testing when these modules are tested as part of the complete system.

- The SysTest Evaluation of Prior Work and NYSTEC Review of the Evaluation of Prior Work; Request for Interpretation (RFI) concerning software setup validation, and polling place voting system requirements; and the Integration Program Plan were posted to the SBOE web site (HAVA pages).

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

- NYSTEC continued work with SysTest on reviewing draft versions of the individual vendor test cases.

- NYSTEC and SysTest held their standing weekly conference call to coordinate various work activities and exchange information.

- TDP's have been received by NYSTEC, and will be analyzed in preparation for the independent security review of SysTest's formal review for completeness and quality.

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

- The next internal meeting on asset management was scheduled for 6/22/08. Based on the recent survey results, SBOE has identified Excel as the software of choice for its initial approach to County Board asset management and tracking activities.

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*

- The Office of General Services (OGS) has issued Purchase Orders to ES&S for the Albany County Board's BMD's.

- The Office of General Services has issued a total of 44 supply and services orders to date.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *delayed*

- Status of SBOE Acceptance Testing at the central test site:
  There have been some issues with the Acceptance Testing at the central site that have affected the testing of both voting systems. The testing of the Sequoia systems was suspended due to a problem with the provision of the ATI devices that are needed to test machine functionality. This issue has been resolved and the vendor is working with the Board to revise SBOE's in house time line to make up the difference in the delivery schedule. As of June 12th, the vendor had shipped the devices and they were received by SBOE. The time loss in testing will be recovered as expeditiously as possible.

  Although the testing of the ES & S machines has not stalled, delivery was slowed due to *de minimus* changes in the ES & S machine that needed to be vetted by the Board and the ITA. It is anticipated that based upon a series of meetings that occurred on June 12th that there will be no further slow downs of machine acceptance in the immediate future. The landscape/portrait issue reported in the weekly Conference Call with the Department of Justice of June 6th has not as yet been resolved although New York City is reporting that a resolution of the issue can be accomplished by the vendor neither SBOE nor SysTest has received any confirmation or documentation as to the resolution of this issue.

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

  - Interpretation of retainage language in the SysTest contract remains under discussion with SBOE and OGS. As previously reported,

SysTest has requested the release of retainage for those contract deliverables which SBOE has formally accepted.

- Work on expanding the Plan B timeline commenced this week, to incorporate related and necessary tasks not previously captured.

- Test Deck documentation is under review and training options are beginning to be discussed. A workgroup will begin meeting on this topic within the next two weeks.

- SBOE and NYSTEC staff have collaborated on developing a "tips" document for County Board use concerning Sequoia/Dominion BMD error messages.

- The ES&S Hash Check procedure has been drafted and provided for SBOE review and approval.

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

See **Testing, Certification, and Selection of Voting Systems & Devices above for clarifying information on delays and anticipated recovery.**

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- The SBOE Advisory Board continued twice-weekly work sessions with consultant firm S.O.E. Software to develop Poll Worker Training and voter education materials and processes.

    - The voter education portal's training design and development is well underway. Training content for the portal is in process.

    - 6 regional training sessions are scheduled to roll out to County Boards 6/18/08 – 6/30/08. Each three hour session will consist of two parts: instruction on the use of the Online Poll Worker Training System, and training in the use of the BMD and its related accessibility features, as well as serving voters with diverse needs. The Online Poll Worker Training System will be introduced to County Board Commissioner's at the upcoming Election Association Commission's Summer Conference on 6/17/08.

HAVA COMPLAINT PROCESS

- No updates this week relative to this category.