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May 16, 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 5/9/08 – 5/14/08

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*

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 on Plan A testing.

    - SysTest has completed the assessment of previous hardware testing for the Sequoia/Dominion system, and informed SBOE that there is no previous testing that can be leveraged for Plan A purposes.

        - Hardware Test Plans for Dominion and ES&S are on track for submission by 5/15/08.

    - SysTest indicates that they are on track for submission of Vendor-Specific Test Plans for Dominion and ES&S by May 20th.

    - Testing of Premier systems remains suspended. SBOE met with representatives from Premier last week to resolve outstanding issues. Premier indicated that they have worked extensively with SysTest in the past, and sought SBOE permission to meet and discuss previous test results for possible re-use in New York State certification. SBOE, Premier and SysTest met on May 13th to discuss Premier's future in Lot 1 certification testing. Premier advised on May 15th, that it did not intend to go forward with Lot 1 certification testing. Premier conveyed that information to its three (3) purchasing counties. Those counties are making the decision as to whether or not they wish to cancel their Premier BMD orders.

- As the previous estimate for testing by SysTest has been exceeded,. a resolution for additional funding was approved by the Board at the Board Meeting on May 14th.

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

  - NYSTEC and SysTest received SBOE approval to begin weekly meetings to review timeline tasks and deadlines in a separate session, with the goal of developing a combined timeline incorporating the SysTest Integrated Master Program Plan (which includes their project plan) into the court-mandated timelines. Feedback from the review of the SysTest Master Program Plan deliverable (including a modified Quality Management Plan) has resulted in modifications to the Plan and associated documents. NYSTEC was asked to informally assess the revised Quality Management Plan, with a response to SBOE and SysTest by 5/9/08. Informal feedback indicates that the revised deliverable documents appear appropriate for acceptance.

  - Contract extensions for NYSTEC (voting system project management support and independent security review) which were approved by the Board on 3/26/08, finished review by OGS, received SBOE Co-Executive Directors authorization on 5/2/08, and were submitted to the Office of the State Comptroller for approval.. A request for approval by the New York State Office for Technology was submitted on 5/1/08. NYSTEC continues working "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*

Premier advised on May 15th that it did not intend to go forward with Lot 1 certification testing. Premier conveyed that information to its three (3) purchasing counties. Those counties are making the decision as to whether or not they wish to cancel their Premier BMD orders. Two counties made second choices on their Purchase Orders, and one did not.

Suffolk County has requested that their BMD order be reduced from 400 to 370 machines.

As of May 14th, sixteen (16) counties have not submitted their matching funds for their BMD orders. At this time, SBOE is working with OGS to prepare a resolution requesting that OSC take funds from the recalcitrant counties' state aid to cover the costs of the 5% matching funds that have gone unpaid.

OGS has issued thirty-six (36) supply and services orders to date.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *on schedule*

- BMD Acceptance Testing continued at the central test site. Daily Sequoia/Dominion deliveries continue, consistent with the most recent schedule provided.

- The weekly status meeting was held with SysTest Labs concerning progress on Plan B testing.
    - Premier systems were updated with the correct version of Windows CE at SysTest last week. A hash check was executed and values were forwarded to SBOE.
        - SysTest completed regression testing of the upgraded Premier system to verify that the system still functions properly with the new operating system. No discrepancies or anomalies were discovered. The Final Test Report for Premier was updated and forwarded to SBOE for review and approval on May 7th. The Board approved

the change to the operation system at the Board Meeting on May 14th.

- SBOE advised SysTest informally that Plan B test cases and test results (Deliverable #8) will be accepted. Formal acceptance documentation is being prepared at this time.

- Sequoia's system was updated to add a cover over a connection port for security purposes and a change to the printer software to allow the system to print much faster. The Board approved the changes to the system at the Board Meeting on May 14th.

- SysTest is preparing a final accounting of the testing costs incurred by Liberty and will provide that shortly. As similar request will be made with respect to Premier.

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

- Sequoia has requested another re-configuration of shipments, based on the level of readiness of individual County Boards to take, or not take, delivery of their orders. SBOE is willing to support this change.

A county survey was sent by Elections Operations to the County Boards requesting information as to their readiness to accept and store their BMDs. The surveys are due on Tuesday May, 20th. The purpose of the survey is to identify if County Boards are encountering problems with funding, staffing or other issues which may jeopardize HAVA implementation. These county surveys will be reviewed for any issues which the SBOE may provide assistance.

HAVA COMPLAINT PROCESS

- New York City provided a response to the HAVA complaint in a timely manner.