

June 20, 2005  
11 Fairview Drive  
Wethersfield, CT 06109

Ms. Susan Bysiewicz  
Secretary of the State  
30 Trinity Street  
Hartford, CT 06106

RE: RFP 04PSX0401--Direct Recording Electronic (DRE) Voting Machines

Dear Secretary Bysiewicz,

To follow up on the comments I made at the June 15 "Best Practices" panel, I am still unable to locate the definition of "DRE" that you mentioned whereby the meaning of "DRE" includes marksense (optical scan) systems, as well as direct recording electronic systems. I must ask again for the precise reference to that definition in the Connecticut General Statutes or Regulations of the Secretary of the State.

Unless there truly is such a definition and unless that definition was well known to voting equipment vendors, then RFP 04PSX0401 as written fails to allow proposals from vendors of optical scan or marksense voting systems and is therefore seriously flawed.

As you will recall, in October 2004 TrueVoteCT.org and VerifiedVoting.org submitted recommendations to you prior to the release of the RFP urging you to include federally qualified, reliable and verifiable optical scan systems in the bidding process. After the release of the RFP you were asked about the terminology and why it did not include optical scan systems. You stated that such vendors could feel free to bid and that there was nothing in the document that would prevent them from doing so.

**Yet, after careful review of the RFP and its supporting documents, including the Statutes and Voting Regulations, the only conclusion that one can draw is that the RFP is inherently misleading and biased in favor of DRE machines and against marksense/optical scan systems. If it truly was your intent to include bids from all types of voting machine vendors---as you have stated---then this flawed RFP should be modified and re-issued.**

The title of the RFP---"Direct Recording Electronic (DRE) Voting Machines"---and its first sentence make it clear that the State is seeking to purchase DREs.

The Connecticut Secretary of the State's Office is seeking to contract with a firm capable of providing Direct Recording Electronic (DRE) Voting Systems, as defined in Connecticut General Statutes and Regulations, for the cities and towns of the State of Connecticut. The cities and towns of the State of

As referred to here, Sections 9-241-2 and 9-242-2 of the Regulations provide the following definitions of DRE and marksense voting systems (emphasis added):

**Sec. 9-241-2. Definition.** *As used in sections 9-241-1 to 9-241-36, inclusive, of these regulations, a **direct recording electronic (DRE)** voting machine is a machine or system that records votes by means of a ballot display provided with mechanical or electro-optical devices which can be actuated by the voter, that processes the data by means of a computer program, and that **records voting data and ballot images in internal memory devices.** (Effective January 21, 1994)*

**Sec. 9-242-2. Definition.** *As used in sections 9-242-1 to 9-242-39, inclusive, of these regulations, a punchcard or **marksense voting system** is one which records votes, counts votes, and produces a tabulation of the vote count, **using one or more ballot cards** imprinted on either or both faces with text and voting response locations. The punchcard voting system records votes by means of holes punched in designated voting response locations; **the marksense voting system records votes by means of marks made in the voting response locations.** The voting machine shall be of the precinct count system type wherein ballot cards are fed into the machine by the voter and the ballots are tabulated at the polling place. (Effective February 23, 1994)*

Definition 9-241-2 is also the definition given in the RFP itself (Section 9: Index of Abbreviations/Definitions, p. 93). No such definition of a marksense system is included in the RFP. Thus, it is difficult to see how anyone reading the RFP or the accompanying Regulations would assume that it included marksense/optical scan systems.

As you can plainly see, these two definitions are quite distinct. Moreover, they conform to the general understanding within the voting technology community of the terms "DRE" and "marksense voting system."<sup>1</sup> **There is no way to conflate the two definitions under the acronym "DRE," as you have claimed.**

A marksense voting system (optical scan system) is not a DRE and simply cannot be so construed by any stretch of the imagination. To claim that an optical scan system is a DRE is simply false and inherently misleading. Lever machines, optical scan machines, and mark sense voting systems do not store votes electronically in memory and therefore cannot reasonably be considered to be DREs.

Thus, the RFP is quite clear and unequivocal in calling for the purchase of DREs and in not

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<sup>1</sup> It is worth noting that the definitions in the Regulations conform closely to the definitions provided in the glossary contained in all drafts of the Voluntary Voting Systems Guidelines developed by the U.S. National Institute of Standards and Technology (NIST), as mandated under the Help America Vote Act (HAVA). The NIST definitions are: *Direct Record Electronic (DRE) Voting System: Voting system that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and cast vote records in internal and/or external memory components. It produces a tabulation of the voting data stored in a removable memory component and/or in printed copy. Marksense: System by which votes are recorded by means of marks made in voting response fields designated on one or both faces of a ballot card or series of cards. Marksense systems may use an optical scanner or similar sensor to read the ballots. Also known as Optical Scan.*

calling for the purchase of marksense systems.

During the RFP's public Q/A Session this very question about the definition of "DRE" was raised more than once. For example, here are a couple of the questions:

78. **Question:** Appendix A. The CT HAVA plan appears to call for investigation/deployment of "electronic voting technology", not specifically "DRE".

Why are voting systems other than DREs not included within the scope of the RFP?

**Answer:** Vendors may propose systems that meet the requirements of the RFP. If a vendor has a system which they believe meets the requirements and specifications of the RFP then the vendor is invited to propose such a system. The RFP is not excluding any equipment as long as it meets the requirements of the RFP. The vendor is responsible for showing how its system meets the specifications and requirements of the RFP.

79. **Question:** Appendix C. Are "the definitions used in the SOS Regulations for Direct Entry (DREs) and for Mark Sense machines" truly the same?

**Answer:** See Regulations to Connecticut General Statutes Sec. § 9-241-2. Definition. For (DRE) voting machine and §9-242-2. Definition for a punchcard or marksense voting system.

Questions 54, 78, 79, and 142 raised similar queries and were met with the same response: "[t]he vendor is responsible for showing how its system meets the specifications and requirements of the RFP." However, given the definitions and specifications as laid out in the RFP, it would be impossible for a vendor to show that an optical scan system meets the RFP's specifications.

The RFP specifications and requirements are written explicitly for DREs (not optical scan systems), and as such they cannot be construed to be generic requirements that apply to any type of electronic voting system. Here's an example from Section 4.4 (page 46) where the functional requirements of the proposed system are described:

**Each DRE Voting Machine must include a minimum of three means of recording votes (Sec. 9-241-23 Regulations). Votes shall be recorded within the equipment's internal memory, on hard-copy output and on a removable memory device. Vendors must describe how their proposed system meets or exceeds this requirement.**

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Because marksense systems do not store votes in the equipment's internal memory, this requirement cannot possibly be met by a vendor proposing an optical scan system. This and many similar passages in the RFP make it very clear that the RFP was written specifically for DREs and does not present requirements that can be met by other types of electronic voting technology.

It is also worth noting that while the RFP defines various requirements that are specific to DREs (as one would reasonably expect from an RFP that was specifically targeted to DREs), it does not specify a single requirement that would be specifically relevant to an RFP that included optical scan systems. For example, there is no requirement regarding the types of ink and/or pencil marks that the sensors should be able to detect on a marked optical scan ballot, nor any requirement regarding sensitivity to stray marks or incompletely-filled-in bubbles. If one were writing an RFP that included optical scan systems, it would be remiss not to include such specifications.

Thus, it would be no surprise to those who have looked at the RFP if no bids for marksense (optical scan) systems were received by DAS. The reason for the lack of such bids would be clear: the State through its RFP did not truly intend to solicit bids from vendors of optical scan systems or other non-DRE systems. The RFP is very clear on this.

This failure to give serious consideration to other types of electronic voting technologies besides DREs is a serious flaw in Connecticut's HAVA process. As best I can tell, we are just about the only state faced with replacing lever machines that is not giving any consideration whatsoever to optical scan technology. This is an egregious flaw in our HAVA process.

Fortunately, it is not too late to change things and to remedy this flaw. Regarding the question of whether the State can amend or cancel the RFP, the language in Section 8.3 (Amendment or Cancellation of the RFP) is very clear on this:

DAS reserves the right to cancel, amend, modify or otherwise change this RFP at any time if it deems it to be in the best interest of the State to do so.

In addition to inherent flaws in the RFP, and hence in the State's HAVA process, there are several other reasons why it is in the State's best interest to modify RFP 04PSX0401:

- Optical scan systems are inherently more verifiable than DREs---voters verify their ballots as they are marking them.
- Certified optical ballot marking devices are accessible to the blind and to all but the most physically disabled voters. Indeed, as was discussed at the June 15 "Best Practices" panel, the ES&S AutoMARK system has now completed Federal testing and certification is expected shortly. Both Mr. Dickson and Mr. Kuell acknowledged that the AutoMARK is accessible to the blind and to other disabled persons. In response to Mr. Dickson's claim that the AutoMARK is not accessible to someone with severe physical disabilities, it is worth noting that no electronic voting system, including a DRE system, is accessible to all disabled voters. A person who is both deaf and blind would require assistance to vote on a DRE.
- As several studies have shown, optical scan systems provide considerable cost savings over DREs, not only in terms of initial capital expenditures but also in terms of ongoing training, maintenance, storage, and replacement costs. According to a study by Yale computer scientist Michael Fischer, it is projected that it would cost \$24 million of Connecticut's \$33 million in HAVA funds to replace all of CT's lever machines with an accessible, verifiable, optical scan system. Replacing lever machines with DREs would cost more than \$42 million.

The revised RFP should contain additional language that states clearly and unequivocally that vendors of marksense (optical scan) voting systems are invited to bid their systems, and it should lay out the general specifications and requirements that such systems must meet.

I understand that the SOTS is intent on getting this process completed by January 2006. Many other states are also being rushed into making hasty procurement decisions, pushed in part by the DRE vendors and their advocates. However, rushing to complete a flawed RFP process in time for the January 1, 2006 deadline is NOT in the best interests of the State.

I therefore urge you to use your considerable influence as the Secretary of the State to modify this flawed RFP so as to guarantee that Connecticut's voters and election officials will have a real choice among the available voting technologies as we begin to replace our lever machines.

Sincerely,

Ralph Morelli  
TrueVoteCT.org  
(<http://www.truevotect.org>)

CC: Governor Jodi Rell  
Mr. Richard Abbate, President, ROVAC  
Ms. Linda Yelmini, Commissioner, Department of Administrative Services  
Ms. Susan Thomas, Contract Officer, Department of Administrative Services  
Mr. Jeffrey Garfield, Executive Director, State Elections Enforcement Commission  
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