

June 23, 2005

George Barnett

Mr. Barnett:

Thank you for your May 16<sup>th</sup> e-mail regarding your concerns with Connecticut's Request for Proposal (RFP) of new voting machines. I am pleased that Connecticut's residents have taken an interest in our voting process because civic participation is the key to a thriving democracy. You made several points in your e-mail and I will respond to each individually. As you know, my office is not in a position to discuss the specific comments in your e-mail about the RFP specifications. However, I do want to provide you with some general background information regarding the RFP that may also address some of your comments.

The State Department of Administrative Services (DAS) is the awarding authority to handle the administration of the request for proposals, evaluations, negotiations and subsequent contract award for the voting machines. According to DAS, "procurement policies do not allow the evaluation team to discuss or elaborate on any aspect of the RFP or proposals during the current proposal evaluation process.

The DAS Procurement team assures you, and others interested in this procurement, that all applicable statutes and regulations surrounding competitive negotiations will be followed and that the proposer whose proposal is deemed by the awarding authority to be the most advantageous to the state, in accordance with the criteria set forth in the request for proposals, including price and evaluation factors, will be awarded the contract".

### **I. Help America Vote Act (HAVA) & the RFP**

As you know, the Help America Vote Act is the most important civil rights law passed since the 1965 Voting Rights Act. HAVA section 301 requires that the municipalities provide one electronic voting system in each polling location in the municipality for use by persons with disabilities by January 1, 2006. This section requires that the voting system used must, "be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." In response to this requirement, our office has issued a RFP. The RFP issued allowed *any* vendor, regardless of the type of technology, to respond to the RFP as long as the machine presented met all of the requirements set forth in the RFP.

In addition to incorporating all of the HAVA requirements and existing Federal and State Law requirements, the RFP also required vendors to demonstrate the security and integrity of their equipment, the back-up and disaster recovery

capabilities of their equipment and all of the standards and safeguards designed to ensure all votes cast on the machinery are counted accurately. Finally, the RFP also required all vendors to describe and demonstrate how they would comply with any provisions enacted by the Connecticut Legislature this year regarding paper audit records.

After our office received any interested vendor's response to the RFP, we began and still are in the process of reviewing the proposals. This process will take significant time, as the process is very detail oriented. At the end of the RFP process, one vendor will be awarded a State contract and, as required by HAVA, federal funding will be spent to purchase 771 electronic voting systems from that contract to provide one electronic voting system in each polling location in each municipality for use by person's with disabilities.

## II. Requirements mandated in RFP

Connecticut's RFP must:

- Be **Accountable, Open and Transparent** through the tracking and documentation of all procedures, including the testing process
- Be **Uniform** by requiring that all systems meet state and federal certification
- Be **Tested** to ensure that all voting machines operate properly and also give the public the opportunity to test and try the voting machines and give opinion and feedback
- Be **Physically Protected** by operating voting systems that are not connected to networks and the Internet
- Be **Prepared for Election Day Use** by educating voters on the use of all voting equipment and by providing training to all Election Day workers
- Provide, **On Election Day**, adequate technical support to poll workers and have a back-up plan for machine failure

Our RFP also requires that vendors meet specific criteria in the area of election security, accuracy, recountability and accessibility. In addition, the public (including people with disabilities), local election officials and state and town officials will test and score the machines for their "ease of use". These findings will also be used to select a vendor. This is the first time in Connecticut that a contract has asked for public input and that input will be used in the final recommendations.

Given my recognition that voter security is an important issue, you will be pleased to know that as an additional layer of protection against electronic voting fraud, Connecticut will require its electronic voting supplier to put its software code on file with the National Institute of Standards and Technology's Software Reference Library. Changes or modifications to the code or to any of the

electronic voting machines cannot take place without written notification to the Secretary of the State's Office.

### **III. RFP Deadline**

My office issued the RFP in December of 2004 because Connecticut has a very lengthy and detailed bid process as outlined in Connecticut General Statutes and as administered by the State Department of Administrative Services. Pursuant to the Help America Vote Act of 2002 Section 301 "Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006." Therefore, as the Chief Elections Official for the State of Connecticut, I must ensure that the January 1, 2006 deadline established in HAVA for implementation of accessible voting equipment will be met.

More specifically, the United States Department of Justice has stated in several opinions:

"With respect to the deadline under Section 301(a)(3), the Department has also answered this question at a number of conferences - Congress has set the date for compliance as January 1, 2006, and the Attorney General does not have the legal authority to extend this deadline.

We understand that you are concerned about the practicalities of timely compliance. We recognize that significant effort may have to be expended by states and local jurisdictions to achieve compliance with Section 301(a)(3) of HAVA. However, Congress has made funds available under Sections 101, 102, 251, 261 and 291 of HAVA which can be used to ensure accessibility of polling places and voting systems." *Letter of March 4, 2005 to the state of Mississippi regarding the accessibility of voting systems and polling places.*

### **IV. Connecticut Law & the RFP**

Connecticut General Statutes require that before any electronic voting system is used in Connecticut the machine must have certain certifications. First, the voting equipment must pass Federal Certification and be issued a NASED Certification number. This certification reviews the entire voting system to ensure both the hardware and software are reliable and function properly. This review includes testing the hardware to ensure that it operates normally in extreme heat or cold, that it will function if dropped from reasonable heights and that the software counts votes in an appropriate manner. (See *Connecticut General Statutes* §§9-24, 9-242, 9-242a, 9-243 ).

In addition, before the machine can be used in the State of Connecticut, the voting system must also pass State certification. This certification includes standards to ensure the system will operate properly and comply with the provisions of the Connecticut General Statutes. This procedure includes a

physical demonstration occurring over several hours where actual votes are cast according to a pre-set format (unknown to the vendor) to ensure all combinations of votes are cast and counted properly. *See Connecticut Regulations §9-241-1, et. Seq.*

Finally, all machines are subject to inspection by certified voting machine technicians that are hired by the municipalities and that have been certified by the voting machine companies. These individuals again check to make certain that the electronic machines count properly and are set up according to the specifications set forth in the General Statutes. After the election, the machines are subject to both a mandatory recount if one is required by statute or can be subject to a discrepancy recount if the local election officials deem one necessary. *(See Connecticut General Statutes §§9-24, 9-244, 9-245, 9-247).*

I hope you find this background information helpful, however, I would also like to address your specific concerns individually.

**You requested I issue a new RFP for voting machines**

Pursuant to the Help America Vote Act of 2002 Section 301 “Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.” Therefore, as the Chief Elections Official for the State of Connecticut, I must ensure that the January 1, 2006 deadline established in HAVA for implementation of accessible voting equipment will be met. Issuing a new RFP at this point would potentially place Connecticut in the position to violate the federal Help America Vote Act law and face action by the Department of Justice.

**You stated that the RFP issued is for the DRE or Touchscreen Voting Machines Only and excluded Optical Scan Machines**

The term DRE is defined in Connecticut regulations as any electronic machine, lever machine or optical scan machine. Any vendor that met all of Connecticut State Statutes and the federal laws qualified to bid on the RFP. In addition, any machine must meet all federal and state certification requirements and must be HAVA-compliant before given consideration.

**You stated that there are alternatives to the DREs that are less expensive and more reliable**

As you may be aware, optical scan voting systems are already certified for use in the State of Connecticut. Therefore, much like the lever voting machines, these systems can be purchased by the municipalities with their own municipal funds. However, the Federal HAVA funding received by the State of Connecticut must be used to first purchase only those machines that will specifically fulfill the mandated requirements of the Help America Vote Act and provide persons with

disabilities the ability to vote in a *private and independent* manner in the same fashion as persons without disabilities. Our RFP does NOT preclude the use of Optical Scan machines.

Currently, we are aware of only three municipalities that actually use the optical scan equipment to conduct elections. A few other municipalities (as many as four) may use the equipment to count absentee ballots. In addition, several disability advocates, computer scientists and law professors have raised serious questions regarding the use of optical scan voting equipment as the technology relates to full access by persons with disabilities and use by low income and minority voters. These individuals believe that voters with a disability that prevents them from marking the ballot, handling the paper ballot or placing the ballot in the scanner are disenfranchised by this technology. They also believe that the paper ballot voting process itself leads to a disparate impact on low income or minority voters because of the confusing process of marking the actual ballot and because of language barriers that may exist and the problems associated with translating sometimes confusing instructions at the time of voting.

Elections Systems & Software (ES&S), the marketers of the hybrid AutoMARK system say their machines comply with the HAVA mandates for accessibility. However, as you stated in your e-mail, on May 9, 2005, ES&S issued a press release that stated that the AutoMARK ballot marking machine has successfully completed final testing by the Independent Testing Authority and ES&S expects full certification status in June 2005. As of June 23, we are not aware that ES&S has received its anticipated certification.

You also stated in your e-mail that the AutoMARK ballot marking technology allows voters with special needs to mark an optical scan ballot privately and independently.

In a May 2005 *Campaigns & Elections* article written by Elizabeth Schneider of Electionline.org, a non-partisan web site that covers voting procedures writes:

“According to Jim Dickson, vice president of government relations for the American Association of People with Disabilities (AAPD) stated in a letter to Ohio Secretary of the State Kenneth Blackwell that counties purchasing the AutoMARK system would violate the law because the machines are not accessible to people with disabilities. The paper ballots marked by the hybrid units must be inserted in a ballot box: that means people with disabilities lose their right to secret, independent ballots if they physically cannot put the ballots in”.

**You stated that the purchase of the DREs amounts to an unfunded mandate to the local municipalities**

This is an inaccurate statement. I have established a revolving loan fund with our federal HAVA money already received so that municipalities have the ability to purchase replacement machines when they are no longer maintainable. In addition, a municipality already pays for the cost of printing materials, moderator training, and storage of the lever voting machines. Therefore, there will be very few additional costs above what a municipality already budgets for these items. These additional costs may be printer paper, computer disks and related items.

**You stated that DRE machines are more expensive than optical scan machines**

According to the American Association of People with Disabilities, the cost of the AutoMARK is at least 30% higher than accessible touch screens. Cost estimates put the AutoMARK at around \$5,000 compared with between \$2,500 and \$3,500 for touch screen machines.

In addition, the ballots currently used for Connecticut's optical scan machines cost approximately \$1 per ballot. Connecticut law also mandates that 2 additional ballots be available for each voter, therefore, the cost of ballots per voter is approximately \$3. Connecticut currently has roughly 2 million registered voters, so the cost for the ballots alone will be more than \$6 million each election cycle. Oftentimes, the ballot must be reprinted because a party petitioned its way onto the ballot after the nominating deadline has passed. Therefore, all the erroneous ballots must be discarded and reprinted.

You also gave the example that Miami-Dade County purchased some back-up ballots in case there were problems with their DRE machines. You also stated that while DREs use less paper ballots than Optical Scan, the cost per ballot is greater on DREs due to volume discounts and set-up charges. As you may not be aware, municipalities already purchase back-up ballots for the lever machines through a volume discount so this would not be a cost increase in Connecticut.

In addition, Connecticut municipalities already pay for the storage, maintenance, parts, machine mechanics, and machine tenders for lever machines. Therefore, there are no additional costs for new voting machines because these are current line items in a town's budget. Connecticut Law requires that Registrars of Voters train machine mechanics and machine tenders. The chosen vendor is responsible for training Registrars of Voters and pollworkers on all new software and firmware requirements and logic and accuracy testing. In addition, the chosen vendor must coordinate storage with the municipality, be responsible for expendable parts and provide hardware and software maintenance.

### **You listed other states that use Optical Scan Technology**

Of the states you listed, it is unclear if the laws in these states require both federal and state certification prior to the purchase of new voting technology. As you are aware, Connecticut requires both state and federal certification before a voting machine can be used in the state. By your own admission, you stated that no optical scan system that exists today has final federal certification and also meets HAVA accessibility requirements.

In addition, you referenced the document entitled "A Uniform Voting System for Michigan" written by Terri Lynn Land, the Michigan Secretary of the State. I did review her report and you will notice that she wrote this paper in August 2003, well before the January 1, 2006 deadline for voting systems accessibility requirements found in HAVA. In addition, she made the decision in response to a state law that mandates the use of a uniform system.

### **You stated that Miami-Dade County in Florida is seriously considering scrapping the \$24.5 million DRE machines after using them for recent elections**

According to the Miami Herald, a computer coding error by a local election official mistakenly voided hundreds of electronic ballots cast in a recent slots referendum. The computer program was supposed to protect ballot selections made by voters who walked away before pushing the flashing red button that finalizes the process. But the coding error instead instructed the machine to ignore the "yes" or "no" choice, counting the ballot as an undervote.

Therefore, coding errors by county personnel, not machine breakdown, caused the Omaha-based Election Systems & Software Inc. (ES&S) iVotronic system to undercount votes in five local elections. In addition, a troubled election division, through poor management and organization by the previous supervisor led to poor training and oversight of the machines.

In an April 18<sup>th</sup> article from *ComputerWorld*, the new temporary Elections Supervisor Lester Sola (the same gentleman that you referred to in your e-mail) said Miami-Dade's problems resulted from human errors. The e-voting equipment "is working as required," he said.

Explaining why Miami-Dade didn't turn to optical scanning equipment in the first place, Sola said "officials viewed it as just a newer variation of the faulty punch-card technology because it included paper".

As you know, Mr. Sola delivered a report on his review of the voting process to the county manager on May 27. Mr. Sola said in a memo that the county should switch to optical scanners that use paper ballots, based on declining voter

confidence in the paperless touch-screen machines and quadrupled Election Day labor costs.

While raising these issues, Sola's recommendation is also based heavily on cost factors that other elections chiefs say are peculiar to Miami-Dade. For example, Miami-Dade spent \$7.3 million to put on the 2004 presidential election - about twice as much as Broward County, which has roughly the same number of voters and uses the same ES&S system. Palm Beach County's cost was about \$1.6 million.

Because the Miami-Dade machines handle three languages and have sophisticated screen displays, it takes longer to boot them up for an election. So Miami-Dade began turning on its machines the night before the election, incurring extra personnel and security costs in the process. Also, as a precaution against massive machine failures, the county had about 800,000 back-up paper ballots printed.

According to Assistant Broward County Administrator Peter Corwin, "We just didn't spend that kind of money. So when we do a cost comparison, there's not going to be that kind of savings,"

According to two Associated Press articles on May 28 and June 1, Mr. Sola's memo "is a recommendation and the county commissioners are the ones to decide if they will dump the machines". The articles go on to say that "Miami will use DREs until the issue is resolved.....County Manager George Burgess forwarded Sola's report to county commissioners, who must decide whether to get rid of the machines. But Burgess cautioned that he must give a careful review to Sola's recommendation to get rid of the machines that the county bought for \$24.5 million three years ago".

As you are also aware, ES&S that manufacturers Miami's touch-screen iVotronic machines are also the same makers of the hybrid AutoMARKsystem.

## **Conclusion**

While I appreciate your comments regarding Connecticut's RFP for new voting machines, it is my duty as the Chief Elections Official to ensure that administration of elections is run well. Connecticut Regulations require that any voting machine approved for use in the state have both federal and state certification. Since the AutoMARK system does not yet have federal or state certification, it would be illegal to review and approve their use at this time.

In addition, Ray Martinez, one of the two Democrats on the Election Assistance Commission (EAC) agreed with Jim Dickson regarding the accessibility of the AutoMARK. Commissioner Martinez says "The EAC has not weighed in on whether this is the case [with the AutoMARK]. We need to look at any of these

areas [accessibility guidelines] where there is ambiguity or need for greater clarity”.

The AutoMARK system, he said, “could be problematic for a person who does not have the use of their hands or is blind or visually impaired to take ballots from the system to a ballot box which could possibly compromise the independent clause of HAVA” (*May 2005, Campaigns and Elections*).

Therefore, it would not be prudent to proceed with the purchase of the AutoMARK optical scan machines at this time because 1) they have not been federally certified, 2) a delay in the RFP process would cause Connecticut to miss the January 1, 2006 deadline and face action by the Department of Justice and 3) the EAC, the federal office that is responsible for HAVA implementation, questions whether the AutoMark system even complies with HAVA. I hope you find this information helpful and I appreciate your comments.

Sincerely,

Susan Bysiewicz

Secretary of the State