



Memorandum

To: Honorable Ross Mirkarimi, Chairman, Rules Committee

From: John Arntz, Director of Elections

Date: August 18, 2006

RE: Update #7: Implementation of New Voting System for the June 6, 2006 Election and the Implementation of Ranked-Choice Voting for the November 7, 2006 Election

The Secretary of State's (SOS) office has made plans to test the voting system used by San Francisco to determine whether the system should be certified for use in ranked-choice voting elections (RCV). ES&S, the City's election systems vendor, will prepare its equipment for testing on August 30, 2006. The testing will determine if ES&S' system can accurately conduct ranked-choice voting (RCV) elections according to new testing standards the SOS has recently implemented.

The voting system must successfully complete the testing before the City can use the voting equipment to machine-count RCV ballots rather than hand-count them. After the testing is complete, it will take several weeks before the SOS will issue a report of its findings. An important aspect of the upcoming election is that November will be the first time ES&S' system will need to process and tabulate ballots from both citywide contests and district-level contests. In past elections, the RCV contests have either been citywide for all voters to cast ballots or at the district level for voters residing within certain supervisorial districts.

The reason the SOS must certify ES&S' system is the SOS implemented new standards for voting systems since the City last used its equipment to conduct RCV elections. In 2005, the SOS conditionally certified ES&S' voting equipment for use in the November 2005 election, and indicated that the certification would expire on December 31, 2005. Without a valid certification from the SOS to conduct RCV elections on its equipment, ES&S must seek the SOS' review and approval of the system.

San Francisco is currently the only county in California that uses ranked-choice voting. Since the voting method is unique to San Francisco, State law does not yet provide the SOS direction on how to test and certify systems that tabulate ranked-choice ballots. Since the SOS wants to ensure that ES&S' system operates properly, the SOS has provided conditional certifications for one election at a time. This approach allows the SOS to learn more about how RCV systems function and also how to better test such systems.

Attached to this memorandum are formal communications issued by the SOS and ES&S. These documents demonstrate the issues presented to the SOS in the course of their seeking to review and certify ES&S' voting system for RCV elections.

Attachment 1 is a letter written on June 26, 2006 from ES&S to the SOS requesting an extension of the already-expired conditional certification for ES&S' RCV-capable voting system.

Attachment 2 is the SOS' July 17, 2006 reply to ES&S' June 26 letter, indicating the conditional certification expired in December 2005, and that the SOS has new, more stringent testing requirements for any system requiring their review. The letter also states that ES&S' letter did not mention the incorporation of Cantonese language files into the operation of the AutoMARK, which is voting equipment meeting federal and state accessibility requirements.

Attachment 3 is a letter dated July 31, 2006 from ES&S requesting the SOS to certify San Francisco's voting system by granting an administrative approval rather than having the system undergo testing. The letter also discusses procedural issues for the AutoMARK and an approach to incorporating Cantonese language files into the operation of the AutoMARK.

Attachment 4 is a letter from the SOS to Steven Hill explaining the history of the certification of ES&S' voting system and the reasons for requiring ES&S to have its system certified for use prior to the November 2006 election.

Attachment 5 is an undated letter from ES&S to the Elections Commission for the Commission's August 16, 2006 meeting that is meant to provide a status report of the progress towards having ES&S' system tested and certified by the SOS.

CONCLUSION

The Department communicates regularly with the SOS regarding the certification of ES&S' system. During our communications the SOS has shown great concern that the ES&S system be properly tested and certified to conduct RCV elections and has worked with the Department and ES&S to resolve issues as they arise. In the event that the SOS does not certify ES&S' system, the Department has developed detailed procedures to hand-count RCV ballots as a back-up plan.

cc: Honorable Gavin Newsom, Mayor
Honorable Members, Board of Supervisors
Dennis Herrera, City Attorney
Ed Harrington, Controller
Steve Kawa, Chief of Staff, Mayor's Office
Noelle Simmons, Budget Director, Mayor's Office
Elections Commission



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June 26, 2006

Mr. Bruce McDannold
Elections Specialist, Voting Systems
Office of Secretary of State
State of California
1500 11th Street, 5th Floor
Sacramento, CA 95814

RE: RCV Certification Extension Request for Election Systems & Software, Inc.'s ("ES&S") Eagle and IV-C for San Francisco Counties, California

Dear Mr. McDannold:

In support of the Ranked Choice Voting (RCV) coding functionality within the Optech Eagle and Optech IV-C for San Francisco Counties, we are hereby requesting an extension of certification

ES&S formally requests an extension to the certification period for the Optech Eagle, consisting of APS Version 1.52(RCV) and HPS Version 1.30(RCV), and Optech IV-C, Version 1.08c(RCV) for San Francisco County. This request consists of extending the certification for any election held before December 31, 2006.

The AutoMARK, Version 1.0, qualified for certification with Unity Version 2.4.3 in August 2005, will be used in San Francisco County for ADA compliance. To support RCV, San Francisco plans to treat the AutoMARK ballots as absentee ballots in which they will be placed into envelopes and delivered to a central location. The AutoMARK ballots will be remarked utilizing an Eagle ballot and run through the Optech IV-C for tabulation. The totals will be run into ERM utilizing the previously certified version of ERM, Version 6.4.3.2 (RCV).

Thank you for your consideration of our request. If you should have any questions or require additional information, please do not hesitate to contact me.

Respectfully,

Lori Collins
State Certification Manager

cc: Susan Lapsley, Assistant Secretary of State
Lou Dedier, Regional Account Manager
Steve Pearson, Vice President Certification



BRUCE McPHERSON | SECRETARY OF STATE | STATE OF CALIFORNIA

OFFICE OF VOTING SYSTEMS TECHNOLOGY ASSESSMENT

1500 11th Street | Sacramento, CA, 95814 | tel 916.653.7244 | www.ss.ca.gov

July 17, 2006

Lori Collins
State Certification Manager
Election Systems & Software
11208 John Galt Boulevard
Omaha, NE 68137

Subject: Proposed RCV system certification for November 2006 Gubernatorial General Election

Dear Ms. Collins:

We have received your written request, dated June 26, 2006, for an automatic extension of the previous certification of the ES&S Optech Eagle and Optech IV-C for Rank Choice Voting (RCV) that expired on December 31, 2005.

The previous ES&S RCV system was *conditionally* certified by the Chief of the Elections Division under the previous Secretary of State's administration on March 7, 2004. Among the conditions of that certification were the restriction of use to the City and County of San Francisco and an expiration of that certification on December 31, 2005. Since that time, the current Secretary of State has implemented the most stringent requirements for voting systems in the country and has instituted a more thorough State examination process, including a volume test of all voting devices.

As noted in my previous email to Steve Pearson and Lou Dedic on June 20, 2006, the originally certified system does not fulfill HAVA's requirements for accessibility that are now in effect. While you have proposed use of the AutoMARK in conjunction with this system, the AutoMARK was not tested and certified for use with RCV ballot marking. As also noted in the June 20th email, full testing of the system, including volume testing, is required before this system can be considered for certification. If ES&S wishes to pursue certification of this proposed RCV system, it is critical that a complete application for certification be submitted as soon as possible so the required evaluation can be completed prior to the November 7 General Election.

ES&S has known of the RCV certification expiration since March 2004. Further, the City and County of San Francisco relates that representation were made to them months ago that a request for certification of an RCV system for the upcoming election had *already* been submitted to the Secretary of State at that time. Despite this, ES&S did not submit a request for administrative

extension of certification until June 26, proposing a system they had already been advised required full examination and testing.

I must also note that your letter of June 26 does not address the concerns about a proposed modification of the AutoMARK device to provide Cantonese support, as I also requested in my June 20 email.

Finally, we have been advised by some of your customers that FS&S is contemplating a firmware update to the AutoMARK to address issues that arose in the June 2006 Primary Election. If this is the case, such changes must also be reviewed, tested and approved by the Secretary of State before they can be implemented in California.

Because the examination, testing and evaluation process currently takes a minimum of five to six weeks, I strongly urge you to submit any required applications for approval as soon as possible so that this process can be completed in sufficient time for implementation in the upcoming election.

Please feel free to contact me directly if you have any further questions about this.

Sincerely,



Bruce McDannold
Interim Director

cc: Ken Carbullido
Steve Pearson
Lou Dedier
John Arntz



EXPERIENCE 20 years of successful service to California's local, state and federal governments
RELIABILITY Proven performance and track record in every election environment
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July 31, 2006

Mr. Bruce McDannold
Elections Specialist, Voting Systems
Office of Secretary of State
State of California
1500 11th Street, 5th Floor
Sacramento, CA 95814

Dear Mr. McDannold:

ES&S would like to formally submit application for the certification renewal of the previously California State Certified ES&S Ranked Choice Voting (RCV) system. Approval is for a one-time, final use in the 2006 San Francisco election. We are seeking an administrative certification extension as no components of the system have changed. The ES&S RCV has been successfully used in previous San Francisco elections and has proven to be accurate and reliable. Enclosed you will find 2 CD's with complete TDP documentation including the RCV Use Procedures previously approved by you. Also enclosed is the March 7, 2005 certificate of approval previously issued by your office approving the ES&S RCV system for use through December 31, 2005.

In response to your July 3, 2006 letter to Aldo Tesi, you will also find a check in the amount of \$10,000.00 to be deposited on our behalf to cover any outstanding certification costs we have and some seed money other certification application approvals. Once we receive application approval and estimated certification costs are determined, we will deposit additional monies as needed. I apologize for the overdraft on our account. Please feel free to send all future certification related communications and requests to either Steve Pearson or myself. We will do our best to be more responsive in the future.

The ES&S RCV system components remain unchanged and consist of the ES&S Optech III-P Eagle (APS Version 1.52(RCV) and HPS Version 1.30(RCV)), and Optech IV-C, Version 1.08c(RCV) for San Francisco.

As stated in my June 26, 2006 letter to your office, it is the intent of the City to use the already California State-certified AutoMARK system as a stand alone system, using the agreed upon processes and procedures used in the June 6, 2006 election (including remarking of ballots capable of being tabulated by the Eagles and IV-C units. In further detail, the AutoMARK will be used in San Francisco in a manner only in full compliance with our current certification privilege granted by your office. To support RCV, San Francisco plans to treat the AutoMARK ballots as absentee ballots in which they will be placed into envelopes and delivered to a central location. The AutoMARK ballots will then be remarked utilizing an Eagle ballot and run through the Optech IV-C for tabulation. The totals will be run into ERM utilizing the previously certified version of ERM, version 6.4.3.2 (RCV).

Attachment 3

The City and County of San Francisco have now conducted two ranked choice voting elections using this equipment, including citywide races and district races. The equipment has performed very well and it has counted ballots securely and accurately.

The AutoMARK does not provide complete Cantonese support at this time. There is a workaround in both AIMS and AutoMARK to allow this to work should San Francisco choose to move forward with this requirement. The workaround centers around changes to items displayed on the screen, .WAV files, and replacement of bit-map graphic file images. The County would need to provide us with the .WAV files to create the election. Should this be a request of San Francisco, ES&S will provide your office with a detailed technical description of the workaround procedures for your approval.

Please advise if there is anything else I can do to assist with your evaluation of this application. I can be reached at (402) 938-1492 or by email at lkcollins@essvote.com.

Sincerely yours,



Lori Collins
State Certification Manager

Enclosures

cc: Steve Pearson, Vice President, Certification
Lou Dedier, Regional Account Manager



BRUCE McPHERSON | SECRETARY OF STATE | STATE OF CALIFORNIA
OFFICE OF VOTING SYSTEMS TECHNOLOGY ASSESSMENT
1500 11th Street | Sacramento, CA, 95814 | tel 916.653.7244 | www.ss.ca.gov

August 8, 2006

Steven Hill
New America Foundation

By email transmission

Subject: San Francisco's voting equipment for ranked choice voting

Dear Mr. Hill:

Thank you for your letter of July 28, 2006, expressing concerns over the Rank Choice Voting (RCV) system for San Francisco for the upcoming November 6, 2006 Statewide Election.

In October 2005, Secretary of State McPherson issued a directive of his requirements for certification of all voting systems in California. Those requirements include the requirement of a volume test of all precinct voting devices, the requirement for integrated system use procedures in accordance with our template, and the requirement for pre-approval by the Secretary of State before components of new voting systems may be combined as a new "blended" voting system. To date, all proposed voting systems, including proposed blended systems, have been held to this same standard.

The Secretary of State has continually expressed his commitment that he will only approve the most accurate, secure and reliable voting systems for use by California voters and has, subsequently, instituted the most stringent testing requirements in the nation.

In your letter, you express concern that we might be treating San Francisco's RCV system different than other systems in California. In fact, we are simply holding the RCV system to the same standards we have held all other voting systems.

The Secretary of State is also committed to supporting San Francisco's requirement for a RCV system, as well as similar requirements currently adopted or that may be adopted by other jurisdictions. That is why this office has proactively contacted ES&S repeatedly, urging them to bring forth an application for evaluation and approval of an RCV system for San Francisco.

The certification of ES&S' RCV system expired December 31, 2005. However, ES&S did not first contact this office regarding the recertification of that system until May 26, 2006, when Mr. Steve Pearson, ES&S Vice President - Certification, called to express their intent to seek an extension of that previous certification. In that phone conversation, Mr. Pearson was advised that such certification would not be automatic and any proposed system would require testing and evaluation.

Despite this, ES&S made no further contact on this issue until June 26, 2006 when, in response to our June 20th email stating that we had received no application for a proposed RCV voting system for San Francisco's November 2006 Election, when Lori Collins, ES&S State Certification Manager, submitted a letter requesting an automatic extension of their previous certification (which did not include the AutoMARK).

On July 28, 2006 our office conducted a teleconference with ES&S staff Lou Dedier, Steve Pearson and Lori Collins. In that teleconference, ES&S representatives promised to provide an application for certification of their proposed RCV system by close-of-business July 31st, including technical documentation of how the AutoMARK would be programmed to accommodate RCV ballot marking. That application and documentation was not received until Thursday, August 3rd, and is currently under review.

To address some of the other issues raised in your letter:

Conditional Certification

In fact, the official certification document of the previous RCV system, dated March 7, 2005, clearly states that the approval was conditional and expired on December 31, 2005.

We do not dispute your citation from the April 2004 Voting Systems and Procedures Panel (VSP) hearing, but must point out that the VSP had no legal authority under California law to approve any voting systems. The Elections Code clearly places such authority solely upon the Secretary of State. While it may have been the intent of the former Secretary of State to review the performance of the RCV system after the November 2004 Election and consider permanent approval, it was not done, despite the fact that the Secretary remained in office more than four months following that election.

In any event, there is currently no certified RCV system, and approval of any proposed system will be conducted under the same standards to which all voting systems are held.

Previous History

You argue that testing is unnecessary because the system has been rigorously tested in prior elections. While prior performance of a system is a good indicator of future performance, it is by no means conclusive or final. Nor is the previous certification a guarantee that the proposed system meets the current standards for accuracy and reliability imposed by the Secretary of State.

A version of the Eagle was recently proposed for certification by another vendor and such certification was denied after testing revealed unacceptable error rates. Surely you are not suggesting that the voters of San Francisco are any less entitled to accurate tabulation of their ballots than other California voters.

Accessibility

After January 1, 2006, HAVA requires that all voting systems used in polling places during Federal elections must include a device that is accessible for people with disabilities. Since the upcoming November 6, 2006 Statewide Election meets this requirement, all voting systems used in this election must include an accessible component.

As previously certified, the proposed RCV system does not include an accessible component for persons with disabilities. While the AutoMARK device has been certified for use and provides such accessible support, it was not tested or evaluated for support of RCV voting.

Finally, as noted above, components of separately certified systems may not be automatically combined into new systems without prior review and approval by the Secretary of State.

Other Blended AutoMARK Systems

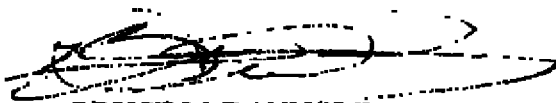
You have correctly noted that other blended systems involving the AutoMARK were approved by the Secretary of State, each of which provided for the manual remake of AutoMARK voted ballots into the native ballot of the tabulating voting system. Such a capability with the proposed blended RCV system is not at question. What is at question is the capability of the AutoMARK to assist the voter in voting a RCV ballot, which has not been demonstrated or tested.

Grandfathered Systems

You note that there are "grandfathered" voting systems still in use in the State, including the Mark-A-Vote system and the original Ink-A-Vote system. Please note that both these systems have current, valid certifications. Further, the vendors of these systems have been advised that modifications of these systems will trigger reevaluation of those certifications.

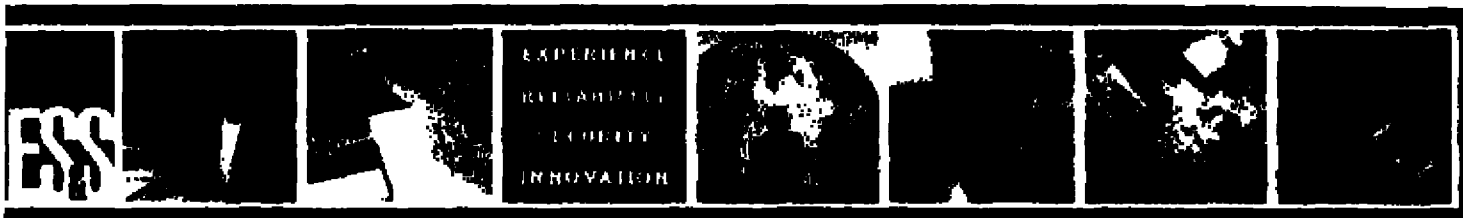
I hope this clarifies the concerns you have with my July 17 letter. Should you wish to discuss these matters further, I may be contacted directly at the (916) 653-7244.

Sincerely,



BRUCE McDANNOLD
Interim Director

cc: John Arntz, San Francisco Director of Elections
Rich Matthews, San Francisco Elections Commission
Lou Dedeir, Elections Systems & Software
Steve Pearson, Election Systems & Software



Louis W. Dedler
Vice President, Regional Account Manager West US
Election Systems & Software
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Sacramento, California 95827
Office 916 361-2107

Mr. Richard P. Mathews
President
San Francisco Election Commission

Attachment 5

Regarding: RCV UPDATE:

To keep you current on Election System & Software's development of a ranked choice voting solution for use in the upcoming November election, I wanted to take an opportunity to provide further information. ES&S has been meeting with officials in the Secretary of State's office on a continual basis, and importantly, we have outlined a testing plan for the San Francisco ranked choice voting system in its entirety.

Currently, the Secretary of State's office has provided ES&S with a testing script. A testing date of August 30, 2006 has been set and will take place in Omaha, Nebraska.

I will continue to keep the San Francisco Election Commission updated with ES&S' progress. Thank you to you, and to the commission, for your ongoing support for these efforts. We look forward to smooth running elections in November.

Sincerely,

Louis Dedler
VP, Regional Account Manager

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