

PUBLIC HEARING  
STATE OF CALIFORNIA  
PROPOSED CERTIFICATION OF VOTING SYSTEMS

OFFICE OF THE SECRETARY OF STATE  
1500 11TH STREET  
1ST FLOOR AUDITORIUM  
SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 17, 2006

10:07 A.M.

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CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

STAFF

Mr. Bruce McDannold, OVSTA Interim Director

Ms. Susan Lapsley, Moderator

Mr. Michael Kanotz, Elections Counsel

Mr. Lee Kercher, Chief of Information Technology

Ms. Caren Daniels-Meade, Chief of Elections

Mr. Chris Reynolds, HAVA Coordinator

ALSO PRESENT

Mr. John Arntz, San Francisco County

Mr. Lou Didier, ES&S

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## 1 PROCEEDINGS

2 MODERATOR LAPSLEY: By my watch, I have about 7  
3 after 10:00. So we'll go ahead and get started.

4 There's no public here today to make public  
5 comment, but we'll go ahead and proceed and hopefully  
6 someone will show up in between now and getting the  
7 report. We'll proceed as normal.

8 I'd like thank everyone on the panel -- for the  
9 executive staff for showing up today. Really appreciate  
10 it and appreciate your time.

11 For the record, we are being videotaped in the  
12 back by Mr. Rowe.

13 Here on the executive staff, we have Chris  
14 Reynolds, our HAVA coordinator; Caren Daniels-Meade, chief  
15 of elections; Michael Kanotz, elections counsel; Lee  
16 Kercher, our chief information officer. These are the  
17 individuals who will be taking whatever public comment we  
18 do hear, if any, and any written public comment that we do  
19 receive, taking a look at it and presenting it to the  
20 Secretary for determination to be made on certification.  
21 Bruce McDannold, to my right, will be presenting the staff  
22 report. And I will be moderating today.

23 The Elections Code provides that Secretary of  
24 State is responsible for approving voting systems for use  
25 in California. Secretary of State McPherson takes this

1 responsibility very seriously and considers public input  
2 to be an important part of the certification process.

3 We're here today to receive public comment on  
4 ES&S, Elections System & Software, rank choice voting  
5 system for the City and County of San Francisco.

6 The process today, assuming if we have any public  
7 actually show up, will be -- we will hear the staff report  
8 presented by Mr. McDannold. There will be a response by  
9 the vendor, if the vendor would like to make any sort of  
10 response to the staff report. And then take public  
11 comment.

12 As a general practice, comments will then be  
13 gathered and reviewed and made part of the recommendations  
14 and sent to the Secretary of State. And no need right now  
15 since there's no one here to go over the rules, the rules  
16 are available at the front desk for the public hearing.

17 A standard operating procedure: the time period  
18 for public comment is two minutes. Ryan Macias is our  
19 timekeeper today, and he would give anyone who wishes to  
20 give a public comment a 30-second warning prior to the two  
21 minutes elapsing. As always, if anyone does give public  
22 comment, we ask that you be fair and be respectful for  
23 those making public comment that may be in opposition to  
24 your own personal beliefs or opinion.

25 If you prefer, if anyone who is unable to attend

1 today, to submit additional or extended comments in  
2 writing to the Secretary of State's Office, they can do so  
3 by the close of business on Tuesday, October 24th.

4 Again, all such comments will be presented to the  
5 Secretary for his consideration on the determination of  
6 certification.

7 With that, I will go ahead and turn it over to  
8 Mr. McDannold to start the staff report presentation.

9 OVSTA INTERIM DIRECTOR MCDANNOLD: Thank you.

10 On August 3rd, 2006, the Secretary of State's  
11 Office received an application from Elections Systems &  
12 Software, or ES&S, requesting a one-time final approval of  
13 their rank choice voting system for the City and County of  
14 San Francisco to use in the upcoming November 7th, 2006,  
15 general election.

16 That system is comprised of the following  
17 components: the Optech IIIP Eagle, Version HPS1.30,  
18 modified for rank choice voting; the Optech IV-C, Model  
19 400, Version 1.08c, also modified for rank choice voting.  
20 They want to combine to provide accessibility support for  
21 voters with disabilities; the AutoMARK Voter Assist  
22 Terminal, VAT, Version 1.0; combining that use of the  
23 Election Management System, Unity, comprised of Election  
24 Data Management, EDM, Version 7.2.1.3, modified for rank  
25 choice voting; Hardware Programming Manager, or HPM,

1 Version 5.0.3.2, also modified for rank choice voting; the  
2 Election Reporting Manager, ERM, Version 6.4.3.2b, also  
3 modified for rank choice voting; Data Acquisition Manager,  
4 DAM, Version 5.0.3.0; Audit Manger, 7.0.2.0; and Optech  
5 Image Manager, Version 3.2.0.0; and then finally they want  
6 to include the AutoMARK Information Management System,  
7 which is actually used to program the AutoMARK device.  
8 That would be Version 1.09.

9           Of these components, the Optech IV-C is a Central  
10 Tabulating Optical Scan Ballot Tabulator. The Optech  
11 Eagle is a precinct Optical Scan Tabulator,  
12 precinct-based. Both of those were actually certified by  
13 the Secretary of State for use in California, back in  
14 1991. They predate the Federal Voting System Standards  
15 NASED's Testing Qualification Program.

16           When the Optech Eagle was originally tested and  
17 certified and modified for use in San Francisco, it --  
18 with the modifications for rank choice voting, it was  
19 tested by Wiley. They perform basic environmental testing  
20 but not a full software review or functional testing.

21           The Unity version, all the software components  
22 similarly -- base line 2.4 -- Unity Version 2.4.2 was  
23 tested and qualified by NASED to the Federal Voting System  
24 Standards, although the modifications for rank choice  
25 voting were not federally qualified. That version was

1 reviewed by the ITAs and tested at the Voting System  
2 Standards back when the system was originally certified  
3 for use in California.

4 I should mention that the system, as being  
5 presented, was originally certified by the Secretary of  
6 State in April 30th, 2004, for unlimited certification.  
7 That expired after use in the November 2004 elections.

8 After receiving reports from that election, as was  
9 required in the original certification, the Secretary of  
10 State's Office extended that certification through to  
11 December 31st, 2005. This is basically the same system  
12 that's been presented for certification with a  
13 modification of the addition of the AutoMARK Voter Access  
14 Terminal to provide accessibility as required under HAVA.

15 The AutoMARK itself -- the version of the AutoMARK  
16 and AIMS, the program to configure the AutoMARK, are both  
17 the same versions that are currently certified by the  
18 Secretary of State's Office for use in California.

19 There were no modifications required for the  
20 AutoMARK to -- although it was demonstrated, its ability  
21 to handle the rank choice voting -- during the testing we  
22 also had ES&S demonstrate how the AutoMARK would be  
23 programmed by altering another language file to support  
24 the Cantonese language, as required in San Francisco.

25 State testing occurred August 28th through

1 September 1st in Omaha, Nebraska, at the ES&S  
2 headquarters.

3           At the conclusion of the testing, we had anomalies  
4 in the vote results for two of the contests in our test  
5 elections. Consequently, retesting was scheduled  
6 between -- on September 25th and 26th at San Francisco  
7 City Hall, at the elections office, there.

8           During the testing, we used a specially  
9 constructed election that was designed, and data designed,  
10 just to test the capabilities of the rank choice voting  
11 system. In the San Francisco testing, we also conducted a  
12 model election and tested using live ballots that San  
13 Francisco had prepared for the upcoming election and their  
14 election definition. Both tests were successful in San  
15 Francisco.

16           Key anomalies that were found in testing: first of  
17 all, originally in Omaha, when we did our original  
18 testing, we had problems with several ballots that were  
19 not read correctly by the Optech Eagle. After cleaning  
20 and calibration, we were still having problems reading the  
21 ballots, and at that point it was determined that the pens  
22 ES&S had supplied to us, to mark those ballots, were not  
23 the proper pens and therefore the machines were not  
24 reading. Once we got correct pens, we remarked the  
25 ballots in the test deck, and we were able to proceed with

1 the test just fine, and the ballots were successfully  
2 read.

3 I point this out because I believe it, again,  
4 underscores the essential weakness of the Eagle units and  
5 how vulnerable they are, potentially, to voters who would  
6 choose to be an absentee voter to, instead of marking the  
7 ballot with the approved pen or pencil, to pick up another  
8 device at home. Voters in that case would be, unbeknownst  
9 to them, marking the ballot with clear, readable marks  
10 visually, that the Optech equipment is not capable of  
11 reading.

12 The -- there were some interesting findings in one  
13 of the summary reports bringing in the rank choice voting  
14 results that indicated there were some preprocessing going  
15 on in both the Eagle and the IV-C where we were expecting  
16 to see actual -- on the ballot imagery report, how ballots  
17 had actually been marked, but the devices instead were  
18 initially interpreting -- for instance, if a voter had  
19 marked the same choice for their -- for their first choice  
20 and the second choice, we would have expected to see the  
21 second choice reflected on the report. Instead, the Eagle  
22 was interpreting that correctly as an under-vote, under  
23 the RCV rules and in forwarding the information as  
24 under-vote.

25 Once we understood the rules, then the reports

1 made a lot more sense and were reconciled. But users of  
2 the system should be cautioned that the report does have  
3 that particular behavior.

4 Finally, the other significant finding was how the  
5 system handles write-ins. It should be noted that this  
6 particular ES&S system can only handle one certified  
7 write-in report within the system and tabulating it.

8 If a voter -- if there are more than two certified  
9 write-ins within the same contest, the jurisdiction would  
10 have to define one of the certified writings for the  
11 writing position on the ballot. They could then manually  
12 define the second certified writing candidate within the  
13 system. And then any ballots that had a vote for that  
14 second writing could not be tabulated automatically, but  
15 all contests on that ballot would have to be manually  
16 input; an unlikely event, as I believe San Francisco, when  
17 we left, had told us they had no certified write-in  
18 candidates for the upcoming election.

19 So given the result of the testing and the  
20 experience, as stated in the report, we recommend -- or  
21 the Office of Voting Systems Technology Assessment  
22 recommends that the Secretary of State certifies this  
23 voting system for one-time final use for the upcoming  
24 November 7 general election.

25 MODERATOR LAPSLEY: Does any of the executive

1 staff have any questions for Bruce on the report that was  
2 given?

3 Is that a hand, Lee?

4 Okay. Mr. Kercher.

5 CHIEF OF INFORMATION TECHNOLOGY KERCHER: Just a  
6 few.

7 Just a few questions. On the condition -- the  
8 recommended conditions on approval, first of all, there is  
9 Condition "I" that the county elections official that's  
10 going to be using this has to submit a plan for poll  
11 worker education and voter education no less than 30 days  
12 prior to the election.

13 Since that's already passed, has that happened?

14 OVSTA INTERIM DIRECTOR McDANNOLD: That has not  
15 happened. So that -- to certify that recommendation, it  
16 should probably be modified.

17 CHIEF OF INFORMATION TECHNOLOGY KERCHER:

18 Otherwise, you have a self-cancelling approval  
19 here.

20 And associated with that, also, in the --  
21 Mr. Freeman's report, he comments that the system is  
22 legacy based and that provision for physical security  
23 needs to be maintained.

24 Should there be a condition that makes that clear,  
25 that the system needs to be physically secured at all

1 times when not in public use, or is that otherwise  
2 covered?

3 OVSTA INTERIM DIRECTOR McDANNOLD: We could double  
4 check, but I would expect it's already covered in the use  
5 procedures. But it wouldn't hurt to add that condition.

6 CHIEF OF INFORMATION TECHNOLOGY KERCHER: Okay.  
7 That's all I have.

8 MODERATOR LAPSLEY: Mr. Kanotz.

9 ELECTIONS COUNSEL KANOTZ: I do have one question.  
10 And I realize that this is not specific to this  
11 application. But what procedures do -- are we going to  
12 have in place to ensure that the improper pens aren't used  
13 to mark the ballots? It's something I'm concerned about.

14 MODERATOR LAPSLEY: Going to the -- to  
15 Mr. McDannold's point about the improper pencils or pens,  
16 whatever the case may be. Well, actually, because San  
17 Francisco would be the one using it, we will let them  
18 address that at that point.

19 Anyone else?

20 Caren?

21 CHIEF OF ELECTIONS DANIELS-MEADE: Those are my  
22 two concerns as well, as a matter of fact.

23 MODERATOR LAPSLEY: Okay.

24 Chris?

25 HAVA COORDINATOR REYNOLDS: No.

1           MODERATOR LAPSLEY: At this point, we'll go ahead,  
2 and if the vendor would like to come up and respond to the  
3 staff report or any of the questions that were raised,  
4 here, by the executive staff.

5           If you wouldn't mind coming right over here.

6           MR. DIDIER: Hello. Lou Didier; Elections Systems  
7 and Software.

8           Basically we would just like to thank the State  
9 for taking the time to test. It's been a long haul with  
10 RCV and will continue to be a long haul with RCV, because  
11 basically the standards are chartered by the City. We  
12 greatly appreciate the testing done by Mr. McDannold and  
13 the staff. Of course, the staff's consideration of  
14 forwarding the information to the Secretary. Looking  
15 forward to the upcoming election.

16          MODERATOR LAPSLEY: Thank you, sir. Appreciate  
17 it.

18          Anything else you would like to add?

19          We do have San Francisco here. John Arntz, the  
20 Registrar of Voters. John, not to put you on the spot,  
21 but perhaps address the issue raised by Mr. Kanotz on the  
22 writing stylus for marking ballots, if you have any  
23 control methods for protecting the voters from that  
24 perspective, and anything else you would like to comment  
25 on.

1 MR. ARNTZ: Good morning. I'm John Arntz,  
2 Department of Elections, San Francisco.

3 With the -- with the voters that go to polling  
4 places, our controls are more within our purview, because  
5 we can ensure that the proper pens are at the polling  
6 places. And the poll workers can hand the voters the pen  
7 as the voters get the ballots. And so every time a voter  
8 goes to the polling places, they have a pen in their hands  
9 and the poll workers can hand them which is the proper pen  
10 with the proper carbon content or graphite content,  
11 whatever it is, that will be picked up by the infrared  
12 optical scan.

13 The challenge is more with the absentee voters,  
14 because we can't control what they will be using to mark  
15 their ballots. And we understand that.

16 So what we do is we put an insert in the envelope  
17 with each absentee ballot which indicates we prefer that  
18 the voters first use a No. 2 pencil; then, second, use a  
19 black pen. But we prefer they use a pencil. And I think  
20 we say it a couple of times in the insert for them to use  
21 a pencil, to do the best that we can to have them use a  
22 marking device that will be picked up by the voting  
23 system. So that's our approach there with marking the  
24 ballots.

25 Then back to Condition "I," when it comes to the

1 outreach plan and also the education of the poll workers,  
2 we do that anyway. And so that's a condition that we can  
3 meet and we can send you information today to show you how  
4 we educate the poll workers and also how we do outreach to  
5 the voters in regards to rank choice voting.

6 We sent a mailer out to all the districts that  
7 will have rank choice voting in this election already, to  
8 alert them to the fact that rank choice voting will be on  
9 the ballot, how to mark the ballot and how the procedures  
10 work related to rank choice voting. Also, on our voters'  
11 guide, we have information on rank choice voting. And the  
12 poll workers' classes, we actually take time to show them  
13 the different error messages that would happen on the  
14 Eagle with the rank choice ballots and to show -- to make  
15 sure that they understand the differences in the ballot  
16 cards with the rank choice content, and also to be able to  
17 answer some basic questions from the voters on rank choice  
18 voting. So that's something that we do.

19 Actually, I would like to have that condition  
20 remain in the report, not to take that away. Because I  
21 think that's an important condition to have, not just for  
22 rank choice voting, for this election, but for all the  
23 voting systems going forward.

24 So for me, I would leave as it a condition in  
25 there.

1 CHIEF OF INFORMATION TECHNOLOGY KERCHER: I think  
2 our concern was that since 30 days has already passed,  
3 it's going to be a little bit difficult to meet it as it's  
4 currently worded.

5 MR. ARNTZ: Okay.

6 Can I just talk?

7 MODERATOR LAPSLEY: Absolutely.

8 MR. ARNTZ: Okay.

9 This is the first time that I've actually been --  
10 not participated, but I've been so close to the  
11 certification process in the past. The rank choice voting  
12 has been reviewed twice by Secretary of State's Office.  
13 And I have been here, in this room, and presented to  
14 different -- different panels and different people. But  
15 this is the first time that I've actually had a chance to  
16 watch the process in action.

17 And I want to say that I was very impressed by  
18 Bruce and also his staff and how they approached the  
19 certification process. I know, in San Francisco, there's  
20 a lot of -- a lot of negativity towards the Secretary of  
21 State's Office when it came to this -- the testing  
22 certification of rank choice voting -- it wasn't premier  
23 at my office; but from the organizations and the people  
24 who have an interest in rank choice voting -- and I  
25 thought all of it was unfounded. And I believe, honestly,

1 that without the Secretary of State's Office and Bruce's  
2 efforts, that we would not have a rank choice program set  
3 to go this November, that people had trust in, to be  
4 honest with you.

5 I think that the Secretary of State's Office  
6 actually kept together the process for certifying -- and  
7 reviewing and certifying rank choice voting. And I think  
8 it's the Secretary of State's Office's efforts that  
9 allowed rank choice voting to be certified for this  
10 election, more so than anyone else involved in the  
11 process.

12 So I want to put that on there.

13 MODERATOR LAPSLEY: Thanks, John. We appreciate  
14 it.

15 There -- it's about 10:30 by my watch. We still  
16 have not had any public show up for public comment. I do  
17 appreciate Mr. Arntz and Mr. Didier for showing up today,  
18 and also, again, the executive staff.

19 The staff reports are available online as are the  
20 independent consultant reports on our Web site.  
21 Transcripts should be available within the end of the  
22 week -- within a week, sorry.

23 And again, written testimony for anyone who was  
24 unable to attend today or would like to submit additional  
25 written comment, that would be taken through Tuesday,

1 October 24th.

2 Again, thank you, everyone, for coming.

3 And that is it. Thank you.

4 (Thereupon the Public Hearing on Proposed  
5 Certification of Voting Systems of the  
6 Secretary of State adjourned at 10:30 a.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, KATHRYN S. KENYON, a Certified Shorthand Reporter  
3 of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the  
5 foregoing Public Hearing on Proposed Voting Systems of the  
6 Secretary of State was reported in shorthand by me,  
7 Kathryn S. Kenyon, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing nor in any  
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 18th day of October, 2006.

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KATHRYN S. KENYON, CSR

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