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>> Thank you all that are here with some interest one matter or another for taking the time to come and your matter will be dealt with very quickly, I might say.

So let's first get onto the minutes of August 2nd.

>> Introductions?

>> Oh, I'm sorry.

First, any agenda --

>> Go around?

>> We will start something that was started a couple weeks ago.

Believe me, I'm not reaching out for anonymity.

I just forgot to do it this morning.

I'm Neal Keel here, one of the New York state board of his recollections.

>> I'm Doug.

Cochair.

>> Linda, commissioner.

>> Helen.

>> Stanley, coexecutive director.

>> Liz Hogan, enforcement counsel.

>> George Stanton, IT director.

>> Bob Brown.

>> Lee, public information.

>> Allison, operations.

>> Carl Valentine.

>> And if you will, our visitors starting over here on our far right.

>> Kneel.

>> Bob Buzz Nick.

>> Andrew Bate.

>> Barbara.

>> Tim Cronin.

>> Anita O'Brien.

>> Bill Todd, interested observer.

>> Dan Weisner.

>> MycoBrian, American Council New York State independent living council, just an individual member of these organizations and interested as well.

>> Tom Gilbert.

Director for the state commission on quality

affairs.

>> Greg Jones, senior attorney, U.S. commission on quality.

>> James.

>> Center for disability rights.

>> Patricia ADAPT.

>> ADAPT.

>> Anita, ADAPT.

>> I'm deaf need an interpreter today.

>> Deaf person today, I wish I had an interpreter.

I'm with ADAPT.

>> Carolyn Todd.

Leader.

>> Kathy Casey, president New York council for citizens with low vision.

>> American council of the blind with New York, advocate DCID Brooklyn center for individuals with disabilities.

>> Steve Holmes self-advocacy association of New York State.

>> Kathy.

>> Thank you very much.

We all identified ourselves.

>> No, these guys didn't.

>> Greg from the office of Attorney General.

>> Jeffrey office of the Attorney General.

>> Chair: Thank you.

>> I'm Bob, director of New York.

>> Lawyers of New York State.

>> Chair: Thank you all very much for your cooperation.

First matter on the agenda today will be the certification of the results of the July 31st special election for the 105th assembly.

>> I move that we certify.

>> Chair: All those in favor basically say aye?

>> I'll start that at the end.

We have two documents basically for you to sign.

This certifies the election of George A. Amador, Jr. of the 106th assembly for July 31st, 2007 special election.

>> Chair: Thank you very much.

Next matter is the minutes of August 2nd.

>> I move the adoption of the minutes as revised

by the changes that now appear in this packet.

So it's the one that says proposed with changes.

>> Aye.

>> Chair: All those in favor?

[Chorus of ayes]

Opposed.

>> Sorry.

>> Chair: No.

That was my fault.

I was reading it.

Okay.

The first thing I want to do is deal with a matter that embraced some active interest concerning Affirmative Action of the board of elections the last time we met.

It was a product presented by Mr. Kelleher.

I say unfortunately because there is no fault here, I was the negative vote.

And I had some things I wanted to look into having to do with certainly not anything that would be of negative interest to anybody.

But let's just say for the purposes of getting this over and done with, Mr. Kelner is going to reintroduce that and we will take a vote on it at this time.

>> Mr. Kelner: I move we adopt the procedures set forth in number 1.

>> Chair: All those in favor?

[Chorus of ayes]

>> Chair: Opposed?

Nay.

Moption is adopted.

[Applause.]

>> And I think we all thank everyone in their input and on this.

I think we received 250 comments, Lee this, is that the number?

>> Lee: Closer to 500 by email and fax.

>> Chair: That's what you call constituent interest.

I never saw much across the state for 26 years.

>> So thank you all.

And we did take this out of order because I'm now going to move that we go into executive session for the

purpose of discussing the litigation with the Department of Justice for discussing the ITA contract for discussion, the CIBER contract, and for discussing procurement issues relating to the Plan A and Plan B contracts.

We don't usually like to do things in executive session, but a number of people have requested that because this so directly relates to litigation issues on all of these issues that we need to discuss how we're going to address these issues and work out our policy first and then explain it to the public.

>> Chair: If there's no objection, the motion carried and we will immediately go into executive session.

Thank you all.

Thank you all for coming once again.

Have a safe trip home.

>> The meeting will resume.

>> Chair: Oh, yes.

After we come out, the meeting will resume.

>> And it may be half an hour, may be an hour.

There will be an interesting discussion, if we have time, on open voting solutions and those issues.

And I wish we could do it differently, but the law prohibits us from meeting other than at the stated meeting time.

So we can't work these out in advance of the meeting.

And we do need to spend some time to talk this through and develop our position.

>> Commissioners are not allowed to meet privately.

Only in executive session of an open meeting.

So that's why we need to do it now.

>> Chair: Again, I hope it is.

So those of you who want to continue your interest on today's agenda will be able to make it as less uncomfortable as we can for you.

(executive session).

(executive session continues).

(executive session continues)?

>> NEIL KELLEHER: We'll reconvene the meeting state board of elections and move on to unit updates, legal by Todd Valentine.

>> TODD VALENTINE: Update on our discussion with the Department of Justice's federal lawsuit.

And what we had discussed as far as agreed to is informed the Department of Justice that we are going to put together a revised implementation plan and that as part of that we will be scheduling a meeting with the county board of elections within the next two weeks to help formulate that plan to include accessibility at every polling site in 2008.

We will report on that hopefully late this afternoon or early tomorrow morning.

And on other cases, we have our reply brief is due in the Lopez Torres judicial contention case.

>> It's due tomorrow.

>> TODD VALENTINE: Yes, it is due tomorrow.

I have reviewed the brief.

And we are sharing our reply brief with the other defendants in the case to see if they have any comments on it.

And to the Board, as far as attendance for all arguments, if you could let me know, I don't need names at this point, but numbers so we can ask our Washington counsel to do what they need to do.

So merely within the next two weeks or so, just let me know.

They didn't give me that.

They said they have a number of ways to get passes for those cases.

So I mean obviously I'll be going down.

>> It is possible.

>> TODD VALENTINE: If you just want to think about it for a second, just let me know.

And then on the regulation front, I'll just touch on that, we have the voting machine maintenance and audit machine regulations.

Deidre has finished the department of state administrative procedure act documents.

But I understand that there's some changes that are coming from the election operations people that

they wanted to add to that in addition to the changes that the government office of regulatory reform has requested to be made.

Bob and I have been working on those changes.

And we anticipate at the next Board meeting that the Board will need to vote for those amended regulations.

And then any questions?

>> NEIL KELLEHER: Questions?

Comments?

No.

Then we'll move on to election operations.

Anna Svizzero?

>> ANNA SVIZZERO: We have continued to provide support to the county boards with regard to the independent petition filings, the rulings on their previous designating petitions.

We're also collecting au of the county filer information relating to judicial delegates, alternates and state committees so we can prepare those official roll calls for those upcoming events.

We've -- I reported at the last minute an application from Sequoya Pacific for a new obscan product.

The application is reviewed.

It is missing three of the attestations that are required by our regulations, and they have been advised that they need to provide those.

The sample ballot they provided is not in compliance with our regulations.

And the tabulated results that they're required to provide with their application are incorrect.

So they've also been advised that they need to review their ballot layout and configuration and also re-run the certification test results.

And we'll wait to hear from them on that matter.

The staff continues to work on NISStack on evaluating the reports.

Once the edits are done, we'll be getting the reports to you.

We're going to be making an point possibilities to -- appointments to meet with each of the vendors.

Rather than constantly trading emails and perhaps not making the point in typing the words that we would

make in speaking those words.

And then from that, we hope to have concepts for how acceptance testing when equipment is actually delivered would work and we might have some recommendations for the group to consider as we discuss them in-house and then ultimately bring some ideas to the board.

What I'm hoping is the last contract call with the county board committee that we put together was held.

There's a lot of information that is in a folder that was provided to you.

There's a summary of the issues that are outstanding, and there are eight of them.

Four of them could initially require Board action, and I realize it's a lot to absorb.

But I think the most outstanding one is whether or not the contract should be re-bid.

And if the Board were to move forward on that decision, then the postings that the OGS team would have to prepare could move forward while we continue to resolve any of the outstanding issues that are in those packets.

But we have resolved the issues with New York City that were outstanding prior to that last phone call.

And I can update you on where we are with the ITA now, or would you prefer that in new business?

>> NEIL KELLEHER: Is that what we agreed?

>> ANNA SVIZZERO: The evaluation committee recommended an ITA position to the coexecutive directors, who had been authorized by the Board to accept or reject that recommendation.

The coexecutive directors did accept the recommendation to award the ITA contract to Systest which was then forwarded to the comptroller's office.

The comptroller's office then indicated that they would not approve that contract.

In the interim, other issues came to surface, including the EAC certification of an additional ITA testing site and also a significant increase in the numbers of systems that are being submitted for certification.

We have an additional five products now that we're looking at.

Therefore, the staff is recommending that the

contract for an ITA be re-bid.

>> NEIL KELLEHER: On that basis, I move that the commissioners authorize the coexecutive directors to approve the bid documents in consultation with the office of general services.

>> Second.

>> Aye.

>> NEIL KELLEHER: All those in favor?

Opposed?

Motion carried.

Any questions or comments, Anna?

If not, we move on to NVRA, Lee Daghlian.

>> LEE DAGHLIAN: Thank you, commissioner.

All things related to the state fair operations are completed.

I want to thank all the volunteers from not just this agency but from the counties, who generally are very generous with their time for this two-week period.

They did it again.

And especially Anunduga county.

It is next week.

We will spend some time and hopefully register some people.

Also we included in your packet an update of the county funds program for your perusal.

We are making just in the last few weeks much better progress than prior to that.

We have actually every county now agreed to do certain things.

Some of them have taken a little prodding.

We hope to have a lot more money paid out the next several weeks than we have earlier.

Also, Greg and Deidre are both putting together training schedules for NVRA.

We've taken on some additional agencies and some special trainings required by some agencies because of new employees.

They will split up state and one do upstate and one do New York City and the county area.

That will start probably mid-September.

Aside from our regular business of taking press calls and general information, that's about all we've been doing.

One other thing.

We still haven't heard from OGS concerning the signoff of the contract for poll worker training by the office of the comptroller.

They asked for additional information from OGS concerning that contract.

OGS tells me they have provided it to them, and we still haven't got word yet.

That's it.

>> NEIL KELLEHER: Okay.

Move on to campaign finance.

Liz Hogan?

>> ELIZABETH HOGAN: Thank you, commissioner.

Commissioners, before I give my report about some specifics that are happening in my unit, I wonder if I might just speak to you for a moment about enforcement and campaign finance.

I would like to tell you that I've been here for three months now and I've spent that time in conjunction with the deputy in enforcement, Bill Mc can, making an assessment of the needs of campaign finance and enforcement.

I look at those together.

In terms of enforcement as relates to both complaints and campaign finance issues, I would like to tell you that I feel that my goal as enforcement counsel is to insure compliance with the statute.

My goal is not to see how many people I can hold in violation and how many cases I can necessarily bring to you at every board meeting.

What I'd like to do and what I've tried to do over the few months and what my plan is for a longer term is to help candidates and committees comply with the law so that we have fewer instances of just mere violations where we're just slapping people down.

We've been working on long-term projects to bring that kind of philosophy to fruition.

What I'm hoping to do by just bringing this to your attention is to have your support in terms of personnel, assignments and procedures and effectuating that kind of policy in enforcement of campaign finance.

I bring that to you first of all.

I appreciate your support in proceeding in that manner.

Now as to the projects that we're doing, this

morning, in order to show cause was signed in the July noncompliance filings for the July periodic, there were 328 people sued.

Those ordered to show cause papers will be mailed to the committees within the next few days and they will be served by the 5th of September.

The overcontribution -- corporate overcontribution project that Commissioner Kellner asked me about in the last meeting is in its final stages of getting into report form.

I think -- I've looked at the preliminary documents, and it appears that there are 40 some corporations on the preliminary document, but it has not been fine-tuned.

It has not been -- there are issues of attempts at compliance that are not reflected in that document, so I don't have it to give to you today.

But I expect that will be ready within the next few days.

And my anticipation is that there are probably a couple of dozen corporations on that.

So I'll have that for you at the next board meeting.

The local filers project is -- in terms of the memos by the counties has progressed.

Yesterday was the date that we had set forth for the primary election was for named candidates.

And I think that we had a fair -- for being an initial project, I think we had a fair compliance.

There were some technical questions I think raised, and Maureen is meeting with Bill today I think this afternoon to address some technical issues that were raised by the counties.

October 2nd is the date that we're asking for the general election list to be sent to us.

That seems to have moved along fairly well.

And we've gotten some good information from that.

The HAVA compliance procedures that we're working on, that goes forward.

We're still working on developing the procedures manual that we would anticipate following ourselves and the new attorneys that we discussed hiring will be dealing with that procedurally.

So that complaint procedure is pretty far along.

We'll be neating with Nlstack, I think, in the next two weeks.

Last week I met with -- Bill and I, actually met with a ventor regarding a scanning project for campaign finance.

And it has to do with taking a lot of paper documents.

There were just a huge number of documents to go into scan form so that we'll have electronic file of all these past documents.

It's a very nice program that would be set up to accommodate for FOIA requests and making the documents available to the public.

So I anticipate going forward on that.

Within the next few weeks we will get a sample.

And that should be done by the end of the year, that whole project.

So we'll get rid of a lot of extraneous papers that we have upstairs and really, I think, foster a very effective environment for looking at documents, assisting people who call us, which is a huge function of what we feel is what we should be doing.

I think it will be a lot easier for the people who deal with people who call in, candidates and treasurers.

To have that information on their fingertips instead of having to run around.

So that's a very promising project.

We continue to work on our RFP for process serving.

We are waiting to exchange information between our office on specific aspects of numbers and locations of filings and with the office of the state controller regarding -- I'm sorry, OGS -- regarding specifics of the RFP.

As to complaints, as I indicated at the beginning of my report, we're working on complaints.

We will have complaints -- we do not have complaints today for you, but we're working on the backlog of complaints.

And we anticipate at the next board meeting, provided it's not in a week, that we will have a packet for you.

My goal is to have complaints in the Board packet

for you every week.

But it's taken -- I apologize for not having that kind of thing for you immediately, but it's taken a little bit of time to make a proper assessment of how to address those issues and how to make a presentation to you.

So I'm hoping that we'll have complaints for you just about every Board packet, that's my goal.

As to the 2006 overcontribution project that Commissioner Kellner raised, we should have that -- I think it will come out to somewhere like 800 pages in our first run of identified corporate contributors for 2006.

We should have that within -- I would say within a week.

And our attempt to have a run to address election cycle overcontribution, we should have a run at the beginning of September.

And our goal is to finish that for 2006, also.

That's about it.

>> NEIL KELLEHER: Thank you, Liz.

>> I'd like to thank you for the professional way that you and Bill are trying to handle your office now that it has so many more obligations under the new law.

>> Thank you, Commissioner.

>> Sounds good.

You'll never -- with OGS.

[Laughter]

>> ELIZABETH HOGAN: Thank you, Commissioner.

>> DOUGLAS KELLNER: I will join in with those that your list of projects was incredibly comprehensive, especially since it's only been two weeks since our last meeting.

But I do want to add one other favorite issue to this.

>> ELIZABETH HOGAN: I'm working on that letter.

>> DOUGLAS KELLNER: No, this is the being able to file without having to use a Windows-based computer.

>> That's something that --

>> DOUGLAS KELLNER: I don't blame you for not working on it in the last two weeks.

In addition to the two dozen projects that you listed, I know you spent a good amount of time last week on HAVA certification issues and other legal

issues that are not directly related to enforcement.

So you've gotten an incredible amount done in two weeks.

I just wanted to keep that on the to-do list.

>> ELIZABETH HOGAN: Okay.

>> NEIL KELLEHER: Thank you, Liz.

>> Sorry, I have to leave.

My ride is leaving.

Thank you.

>> NEIL KELLEHER: Okay.

ITU, George Stanton.

>> GEORGE STANTON: As you know, ITU is mainly a service organization of the other units in the agency, so we've been spending a lot of time, of course this time of year and especially with the July filings supporting the campaign finance projects that are going on as well as Liz mentioned the gathering of data coming in from the counties, who is running for office in the primary this time.

I've got people working on that as well as someone working on the report for the corporate overcontributions.

So we've been spending a good deal of time on that as well as myriads of phone calls coming in from people looking for help filing.

Unfortunately, I'm losing one of my very good help desk people in the next week, and hopefully within the next six weeks we can get her replaced.

It's going to be a pinch, though, for a few weeks.

As far as what else we're doing is mostly HAVA-related.

We're getting down to crunch time on the HAVA database now.

We have most of the counties on board.

We've completed training on Westchester county last week.

We are training on Nassau county next week.

Those two counties should both be alive and on the statewide database before the end of August.

In addition to that, we're stabilizing the system.

As little problems crop up, we fix them and move on.

So that leaves us only with the city of New York yet to come onto the statewide database.

And as you know, we got this letter from the city board describing their process for registering voters and asking for a response from the Board as to whether we want them to send us their data under those circumstances or not.

I don't know.

The steering committee's been working on a response for this as to how to respond to this letter; but as I understand it, we don't really have any final product that everybody's going to sign off on yet, so that's going to have some possible impact on the whole project.

Technically we spoke to New York City yesterday.

And as far as the technical things are going along well.

They will be doing some local testing next week and are still online to come on about the end of the month with their final data, which would bring them on live sometime in September, assuming we respond to the Board's letter in a way they anticipate.

>> NEIL KELLEHER: Thank you, George.

Any questions.

>> Do we take up the response?

>> Let's do it now.

Do you have that?

Are there other copies, Bob, of that revised?

>> Bob: I don't know if the steering committee has seen the revised.

That's what I've been working on down here.

Because there was concern with the first version.

>> You've got to give Peter a copy.

Just give me another one.

Give one to Commissioner Kelleher, please.

>> I had a problem with the first draft that apparently went through the steering committee because it doesn't -- in my view, it doesn't seem consistent with the existing text of the regulation.

67, 6217.5 , what is it 3 C?

So rather than -- I still think the steering committee should go back and address this issue in terms of -- this is what the reg says.

That the steering committee should go back and address this.

But in the meantime, New York City should be told

to hookup to the database.

Without any conditions or anything else.

In other words, we'll take up the issue of whether to amend 6217.53 or whether to revise the procedures.

But in the meantime, New York City has to hookup with whatever data they have.

>> I think the difference, Doug, is if we don't say in the regs, I don't believe, that they have to give us the log-in information of the bipartisan team that signed off on the registration, that's a local procedure.

And when they've completed the registration process at the county level, they transmit the registration data to the state board.

We have the ability to capture the data if they give us that log-in information for that bipartisan team of people.

But the requirements that they keep -- I don't think the regulations say that they have to tell us who that team was.

We just tell them they have to follow their procedures.

If they want to tell us who that log-in information is, we have an ability to receive it.

But more importantly when they follow the procedures that they have adopted locally to register voters and in compliance with their procedures give us the voter registration data.

So I agree with the part that says New York City ought to give us this.

And to the extent that we have questions about how to perhaps put the regulation into better plain language, we can continue to work with them on that.

But I think their process that they already have in New York City meets this portion to the extent that they're not sure that they have a bipartisan team doing it or not.

It is the process that the Commissioners have adopted that they use, and they are using their own procedure to register voters.

And all we're saying is we need that sooner rather than later.

And if we have a discussion on how these words should be more plainly written or understood or

described, we can continue to work with them.

But connect us.

>> Bob, are you saying that under the original draft, then, you have reviewed the regulations, and you conclude that there's nothing in the regulations that requires that the identity of the second person checking or verifying the registration be entered in the database?

>> In our database, the state database.

It has to be entered in a log.

But not --

>> I'm trying to find the exact text in the regulations.

>> Bob: It's 3A.

2 and 3 and 4.

So it's on 489 of the blue book.

>> But still insisting, Bob, even though you and I had a big conversation concerning this, but they're still insisting that both signatures have to --

>> Bob: 3 A little Roman 1, someone enters the data in the first instance.

Little Roman 2, that the data is proof read.

And New York City, the registration activity is not final when that first person enters it in the computer.

It has to go to the quality assurance step.

And that person reviews it.

And when they sign off on it, either it's complete or if it needs to be edited, it's edited, that person does it.

But they have their log-in in order to do that second stop.

>> But, Bob, it says in 3a sub 2, the very last phrase "who also electronically signs their work."

>> Bob: But that's, in our opinion, the entering of -- they log in and the log keeps track.

Say since Commissioner Kelleher registered them, he would log in and register the record.

The log would record it.

You log in.

The log of their system should keep track of that.

>> Their system log.

>> Bob: Correct.

>> But not our log?

>> Bob: That's correct.

>> And are you comfortable that that's, in fact, the case?

>> Bob: Well, what New York City has said, that while it's their procedure that is being followed, they allow their procedure that it isn't guaranteed that one person of each political party.

They can't be sure that it's a different political party doing quality assurance.

>> But that's their procedure.

I'm concerned that your letter -- that the first draft of the proposed response does not diminish the impact of that provision in the regulation that says "who also electronically signs their work."

>> Bob: That's where we think the inartful drafting of the regulation, because we meant the log portion.

They think that it appears on every record, some kind of physical fingerprint.

But we think the log is good enough.

But we aren't sure from our conversations with New York City whether we need to amend the regulation to better word this?

And they've asked us if we'd be willing to meet with them to find a more clear way to write this.

And we said we'd be willing to have an open mind and work with them.

But in the meantime, please connect to the statewide database and give us the data.

Likewise, we're unsure -- they've said in their letter that they want to amend their own procedures to follow these regulations.

So we're not sure what New York City wants us to do: Amend the regulations to plainly say what they are doing, or they will amend their procedures to do the regulations.

So either way we think they ought to connect to the statewide database.

We think they comply with our understanding of the regs.

And we're willing to meet with them to discuss it.

>> My suggestion is that there be an immediate, unconditional letter telling them to hookup to the statewide databases.

And then separate correspondence that deals with the interpretations of these issues.

And I think I do better understand what was behind the first draft.

I am concerned that there be no question, that we be unambiguously telling New York City to hookup to our system regardless of any of these details with respect to the procedures on how their registration data is gathered.

After all, there are 4 million registration records in the city system.

And only several thousand of them have been gathered since these regulations were put into effect.

So we're talking about just a tiny percentage of the registration records of New York City system.

And I'm concerned that some people think that this was a pretext for New York City not coming into our system.

And I want to make it clear that these issues are completely divorced.

So that's why I'd like a one or two-sentence letter to New York City saying "hookup to the system forthwith.

" and then in separate correspondence, the steering committee can address the interpretations of the regulations.

And I think I now understand your interpretation.

I don't have a problem with the interpretation.

But I just don't have it tied to -- it has nothing to do -- the interpretation that the steering committee's given to the regulation has nothing to do with whether or not New York City has a better system because they have to hook into our system even if they're out of compliance with our regulations, they still have to hook into the system.

And then we'll deal with compliance with the regulations as a separate issue.

That's my suggestion.

>> Do you think this letter is sufficient?

This brief letter?

I think that's what they're asking us.

>> My question is you seem to suggest we might send both versions.

Brief one first and then wait a few days and send

followup as our proposed solution.

>> DOUGLAS KELLNER: Maybe even shorter than the first letter.

>> --

>> DOUGLAS KELLNER: I want to make it clear whether or not their regulation, whether or not their procedures are currently in full compliance with our regulations concerning voter registrations is of no consequence as to whether or not they have to hookup -- and then separately deal with the level of compliance with the regulations on a separate issue.

And it looks like they're not out of compliance significantly.

But I don't want them to feel that there's, as I say, some people have been questioning whether these issues were a pretext for not hooking up to the system.

And they're not a legitimate reason not to hookup.

Especially since the number of records at issue is only a tiny portion of the 4 million record database.

>> I agree.

From the beginning while -- explained this problem to me and we talked about it, that they should immediately start to comply.

And we would deal with any questions they had later.

For the same reason, I know they have millions there.

So I have to send them.

>> Do you want to make a motion like that?

>> The letter went to the board.

Is it Stanley?

Is it George?

>> Yes, from Peter and Stanley, absolutely.

>> DOUGLAS KELLNER: So my motion is we direct the coexecutive directors to send a one-sentence response to the New York City Board of Elections informing them that they should hookup to our -- that we've received their letter and that they should hook up to our system.

>> Rather than have a run-on sentence, could we say a short?

This way if they need two sentences, they have it.

>> DOUGLAS KELLNER: Direct the executive directors to respond to the New York board of elections with

regard to the consensus of our discussion.

>> NEIL KELLEHER: Include the word immediately.

>> Immediately, you're right.

Yes, I agree.

>> Okay.

>> NEIL KELLEHER: All those aye?

[Chorus of ayes]

Opposed nay?

Motion carried.

>> Now we have old business.

>> DOUGLAS KELLNER: We did procedures for ballot marking devices.

We discussed the cancellation of the CIBER contract in executive session but took no formal action.

So I guess it goes to the next item.

>> NEIL KELLEHER: Open voting solutions.

>> They want us to be their solution.

>> DOUGLAS KELLNER: Anna, would you like to present this or would you like me to review the issue?

>> ANNA SVIZZERO: You can, Commissioner, because you're more articulate than I.

>> So we received a request from open voting solutions dated June 26th that requested that we waive either all or a portion of the certification fees for their system that they proposed to submit, which is based on open source voting.

Or open source code.

And there's several arguments that they and other advocates for open source voting have been making on why this is a public benefit and is something that we should do by subsidizing the certification fee.

The key thing is that -- well first of all, we should note that open voting solutions itself is a for-profit corporation and did put in a bid to the voting systems contract.

And I believe the status of that bid is that it was rejected by OGS for not complying with the bid standards; is that correct, Anna?

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: So their bid is dead as of this time, right?

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: And that is an open contract

so that they could resubmit a bid if they wanted to.

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: But they have declined to do so so far.

Partly because of, I think, a misunderstanding between them and the Office of General Services in terms of what's required for them to get into a compliant bid and partly out of obstinacy, -- obstinacy because they either don't understand or don't like the way the bid terms are put together and feel that they shouldn't have to address a complete bid.

I don't know if I'm allowed to go into much more about why their bid was rejected.

I will avoid doing that right now.

So this is a separate issue whether they can get their products certified.

And they are frustrated by the fact that our certification fees, by the fact that our certification process was so expensive.

They make the argument that they are prepared to, because it is open source code and open software that they are donating to the people of the State of New York as to everyone else free use of all the software that they have provided, that they have developed themselves through the open source voting process.

They're also arguing that what they're really doing is very different from the concept behind our current procurement and contract plan, which is that they are -- by providing open source software, they are letting us go directly to the vendors of scanners and printers so that all we have to do is purchase in bulk off the shelf scanners and off the shelf printers and then use the open software to program those systems so that, in effect, the state is taking complete control over the voting system rather than having it being developed and run by vendors.

So if in fact all of these claims are true -- and I have no reason to think that they're not true -- they argue that there is such a substantial benefit to the state and to the public as a whole that the state should subsidize the certification fee process.

Now, in the last appropriation, the legislature did authorize was it 4 million or 5 million dollars in

HAVA funds to be used for unreimbursed certification expenses.

So we have already had some discussions over how we will use those funds.

And the thought here is that one of the things that we should put on our agenda is whether to use those funds as a way of promoting open source voting so that the state would have greater control over the voting equipment.

I might add that one additional side benefit that I see is that I had personally been frustrated by the fact that no voting system vendor has been willing to submit to us a voting system with a scanner that is wider than 8-1/2 inches.

And what we have seen from all of our preliminary models is that the real estate on the ballot is so precious that 8-1/2 inches is not really wide enough and is not really the optimal width for a ballot in New York, which requires a full face ballot.

And that we really should have a ballot that is 17 inches wide, which would potentially quadruple the size of the ballot.

And, yet, it'll be a big piece of paper for the voter.

But that means we can useable type and make it more use follow for the voter than the ballot we have now that fits on 8-1/2 inches.

So, for example, if we had the open source model working for us, we would just go to Kodak and say "we want to use one of your your 17-inch scanners.

And, yes, we understand the 17-inch scanner costs 1800 versus the other 800.

But that's worth it to us to pay the extra \$2200 per scanner so that we could have a wider ballot.

So far no vendor has taken us up on that yet.

But if we were in control of the software, we would be able to do that.

As I say, it's a completely different model.

I realize it's not something that the staff has been working on yet.

And indeed my biggest frustration as I discussed this with public interest groups is that we don't really have anybody on staff, as far as the people who we do have on staff are working, they are not experts

at computer programming.

And they are certainly not trained and equipped at this point to take open source software and use it to set up a voting system.

It's hard enough for the staff that we have assigned now to learn how to use the systems that are already come prepackaged from the vendors who have put in bids that are so far qualified.

All right, so get to the point.

I've put on the table for discussion this model.

I think that it's worth a discussion of the pros and cons of it.

If people are rushed to do it today, then I would just suggest we carry it over until the next meeting.

And in the meantime, then perhaps we should at least consider asking any vendors who are prepared to demonstrate the open source model to come do that.

And that that would be an open call for any vendor who wants to show us something that works off this completely different model from our current procurement.

Anna?

>> ANNA SVIZZERO: Dr. Johnson, we're hoping that he'll be here in the middle of September.

We've been trying to get a demo set up with him, but he's been unable to get one together, and getting an entire product together for us.

Our last conversation was he hopes to be here in the middle of the month.

So we'll certainly share that date with everyone so that we can see not only his product but how it works with the off-the-shelf products.

>> My concern is if we allowed this, and not only this company but anyone else that can simply these kind of things to us, will they keep their word?

Will they be a supplier?

Will they let people use their product?

You know, I just wonder if everything he says here he will come through on.

>> ANNA SVIZZERO: I guess if there was a way for him to bid on this contract, he'd be bound to it from whatever services it is he's capable of providing.

But I'm not sure --

>> That's what I'd want to know.

>> How he'd respond to that request in that way.

>> He wants a big favor.

>> It's not a favor.

That's not the right way to do it.

He's asking for a subsidy.

>> All right, a subsidy.

>> DOUGLAS KELLNER: And my greatest concern is that it's a for-profit corporation that is asking for that subsidy.

>> That's why I'm asking this question.

>> DOUGLAS KELLNER: But the issue -- so there are really two separate issues.

One is open voting solutions is one company that unsuccessfully bid on the plan A contract, a vendor we would want to do business with.

And that's an issue that we're not talking about because that's really a procurement issue.

>> I guess I didn't really get my question --

>> DOUGLAS KELLNER: But there's a different policy issue, which is especially in light of the problems we've had where so far no vendor has been able to submit a product that complies with the 2005 voting system guidelines, should there be a complete model shift within the state board of elections so that instead of the current model, which is put all the standards out there.

And let the vendors come in with their equipment and submit it should, instead we be promoting a different system, which is we get open source software that is freely available for anybody to use.

And instead, we take the responsibility for assembling the components to put together a voting system.

And as I say right now, we're not set up to do that at all.

So it's a complete paradigm shift from the way that we're doing this now.

>> I didn't think it would be done.

I thought that they would -- that companies that we dealt with that didn't have these said "we won't have to do those particular things now, the printer" you will hurt yourself from opening solution source solutions.

And there have been.

>> DOUGLAS KELLNER: You're absolutely correct. That's what open voting is saying. We'll do that piece for you. We'll go up and buy the printers.

>> So it isn't like we have to put it off again as much as we're saying --

>> DOUGLAS KELLNER: That's what they they would do.

I think so.

I think that's their proposal.

>> All right, you will meet with Mr. Johnson so we don't have to decided to?

>> DOUGLAS KELLNER: No.

It's just a question of sort of getting this concept of the paradigm shift out there.

>> Let the staff look at it and see how they feel.

>> DOUGLAS KELLNER: And start to get public feedback, as well.

>> I think it's a very intriguing possibilities. There's a lot of abilities.

If.

>> If they know that this is a --

>> I think this whole concept open course something that is this -- I think this is an opportunity top do it.

>> I kind of agree.

It's increeinging to me, too.

>> It could get us over some of the hurdles we've been facing.

>> Do you want to put it over for another meeting, then?

>> Right.

I think that's fine.

>> How do you feel?

>> DOUGLAS KELLNER: I think we should at least get some recommendations from the staff, give them time to think about this in terms of what the pros and cons would be of waiving this.

I see Todd's reading through the certification provisions of the election code.

The key question, Todd, is whether the appropriate changes that.

By the text of the appropriation, we certainly couldn't do it for one vendor.

We would have to --

>> Oh, right.

Do it for everybody.

>> We'd have to make a policy.

We'd have to make a policy on using the funds for clearly a state purpose and not for the purpose of assisting one particular vendor.

But, for example, Todd, if we were to take the open source software and test that software for compliance with the 2005 standards, since it's open source and no one owns that, I don't think that that would necessarily be something that we couldn't do on our own, get certification funds.

Irrespective of any particular vendor's application for certification.

In other words, if it were our own product and we wanted to test what we ourselves are using or doing, I think we'd be able to do that.

>> We'll put it aside.

>> DOUGLAS KELLNER: But your views on those legal issues are certainly welcome.

>> NEIL KELLEHER: Do you have a motion?

>> There is no motion.

Let's just carry it as old business again for next meeting.

>> NEIL KELLEHER: All right.

Next, go down to new business Anna raised one issue with her report and that is whether to re-bid the contracts.

Is there a staff recommendation that the Commissioners take action at this time?

>> The consensus of all of the counties on the phone, including the city and their consultant, was to re-bid.

OGS feels that because the changes that were made are substantially different from what was negotiated and initially sent over to the comptroller's office are also substantially different.

They feel we should re-bid.

We haven't really discussed this in-house.

Anybody that's been on the conference calls has been privy to those opinions.

My own personal opinion is that we should re-bid.

We have more vendors.

I think re-bidding, if you were only going to re-negotiate, only the vendors who were in this initial group would re-negotiate and they could move forward.

That would include Sequoia submitting a new system and Avante submitting a new system, but there would be no movement on any new bidders such as precise or open voting until those contracts were re-negotiated and awarded by the comptroller.

So they are end-to-end processes.

>> You wouldn't be able to do that because if you're re-bidding, you're opening it up to a new set of vendors.

>> That was the difference between re-bidding and re-negotiating, right.

>> I would disagree with that because this is an open procurement.

So at this point what OGS has done in light of our working on re-visiting this is that they're at this point not -- the word's not accepting them, but we're not really encouraging people to recognize their bid in terms of coming online and hopefully for the vendor.

So they wouldn't -- anybody, once we come to what the new terms are, adopted them, then they would be part of the existing open computing -- requests.

So just simply in line behind these other vendors.

>> That's my point.

They would be end-to-end.

They wouldn't be able to proceed in -- if this was re-negotiated, they wouldn't be part of the original conversation.

That conversation is only going to be held, according to the counsel at OGS , Michelle Rio, that because those contracts had been awarded, these people were part of the original bid, that they could add projects to it but the renegotiation would have to be concluded and awarded before OVS and precise and anybody else who opened the open procurement process began their negotiations.

>> We could start the negotiations before.

>> I'm telling you what the council there said.

>> You may want to nail it down.

>> Another item.

>> Exactly.

>> Our concern on this issue has been the timing.

I don't know that anybody re-bidding is a -- I'm not sure it is the right answer.

But certainly in this context makes some sense.

But I also understand counter to that is that it will add crunch time to the process.

>> Re-negotiating is 174 days and re-bidding is 220.

So the time at this stage of the game isn't all that significant in light of everything else we're facing now.

>> And it would be completed long before --

>> Exactly.

And it would be cleaner.

>> --

>> But that was the issue.

I mean again it's the timing of everything.

>> Let me just say again that I think it's almost out of fairness to the managers that we should re-bid this.

Due to a contractor or verification has been so long that I think that fairness to both the state and the vendors dictates re-bid.

But I don't know that we have to make a decision today, so that I'm willing to let you put this on the agenda for your meeting --

>> Let me just ask.

Where are we on the final contract?

You mentioned a final meeting.

>> There are a couple of issues that we just got in the middle of the night from New York City's consultant.

And I shared with my staff this morning on the software license issue.

There's this issue of whether recycled materials can be used.

There were four issues that required a board vote.

The other four issues were being commended up in-house and would become part of the track change document that the board could see it as a whole.

>> When will we see it?

>> Then they could see one final document as soon as I could meet with OGS after that to create a new document.

>> The pages you gave us this morning.

>> Of that all the information that we have to date.

I tried to compile it all.

Because there's a lot to chew on.

And I would hope if this gets put over, you don't throw all those away.

>> Oh no.

>> Which are the four?

>> The one with the asterisks.

>> Where are we?

>> The first piece of paper that you gave.

>> The very first document in your folder.

>> Status issues.

>> Are these the double asterisked?

>> Item number 1 is using recycled materials.

Item number 2 for the board would be hearing on item number 4 here.

The payment scale and the interplay between that and the bond.

>> Let me ask why those need to be decided separate from the contract.

Couldn't we approve the contract and the Board vote on the whole contract and pass on those at that time?

>> As I say on the note, we don't have the ability to be able to say how to do this bond.

We've never done anything like this.

OGS was to provide some sample language from some other New York contracts.

He didn't do that.

What they did is what Connecticut put in their contract.

And that document is in in packet.

What we had asked them for was two or three options for deploying the bond so the board could look at those and pick one.

And that language would go into the contract.

OGS has not done that yet, so this is something the board needs to deal with but can't deal with it today because I don't know, unless all the attorneys decide to get together and decide how the bond would get activated.

>> I guess I'm looking at more of a process question, guys.

Is this something that the board has to vote four separate times on before you bring him a final contract.

Or could we ks a staff provide a recommendation so that the board can act on this at possibly the next meeting?

>> I think we could recommend a position.

>> Certainly not today.

>> No, I'm sure you're not.

>> I wouldn't expect you to, no.

>> Nor would I.

I'm just bringing this for information.

>> I think what we should do is incorporate these into the final document that you're prepared to present to the board for approval and make it part of that whole package rather than separating it out.

Because you will just delay.

>> I'm find of that, that if the USs we could make arrangements to advertise it while the other issues got wrapped up.

That was my only thought.

I was providing it for information because it is a lot to chew on.

I certainly didn't think that anything more than that was going to come today.

>> Well my hope would be that we would have at our next board meeting a contract -- and I would also hope at that time we'd also vote on the re-bidding proposal.

We could do them as a package.

So we could vote on the contract and the re-bidding.

>> I agree.

>> Maybe once the board has the contract in front of them, it would be better prepared to vote on whether they need to re-bid it or not.

>> Absolutely.

>> So it seems to me we could package those together rather than doing it piecemeal.

And do them as a package.

I'd shoot for the next meeting.

I don't know if it is realistic.

>> All the changes that we have today are in the draft change document that's in this package.

So I will lean on OGS to try to get the other

sample language that the board could pick from, put all three options in there and strike whatever the board doesn't like?

>> I think what Peter said even more than that, that the attorneys in the office will meet together and look at this and make some kind of a decision.

I think that's also fair.

And we're dealing with their attorneys, and I'd like our attorneys, especially to be able to look at things and say --

>> I'd like to see a recommended solution from the staff to the board.

If the board disagrees, that's their business.

But rather than providing menu items, I think it would be helpful if they had a list of recommendations.

>> I'd like them to see options and take our recommendation and take it from there.

But I'm fine with all of it.

>> You'll be hearing things from staff and you could work -- that's a concern.

We have to move this along but we have to know what we're doing especially --

>> Okay.

My suggestion is that we meet on September 10th, 11th or 12th, which is Monday, Tuesday or Wednesday of that week.

>> Seems all right with me, any of those dates.

>> NEIL KELLEHER: That's Monday, Tuesday, Wednesday?

>> Generally people don't like Mondays?

>> I know they don't.

Tuesdays are better.

>> So Tuesday is 9/11, which is as good a day as any for us to meet.

Why don't we say tentatively on noon on September 11th?

>> NEIL KELLEHER: There being no further business, I welcome requests for adjournment.

>> Yes.

>> NEIL KELLEHER: So moved.

All those in favor?

[Chorus of ayes]

Opposed nay?

So moved.

Thank you very much.

And if everything is true here, we'll see you on  
September 11th.