



J. KENNETH BLACKWELL
Ohio Secretary of State

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Directive 2005-24
September 21, 2005

TO: HAMILTON COUNTY BOARD OF ELECTIONS

On August 25, 2005, this Office received from the Hamilton County Board of Elections (the "County") a letter dated August 18, 2005, in which the County requests an extension of the certification deadline established in Directive 2005-16 (the "Request"). (A copy of the Request is attached as Exhibit A and incorporated herein by reference.) The Request was sent in follow up to a meeting between representatives of this Office, the County and Hart Intercivic, Inc.

Based on the information provided in the Request, the County is granted an extension of the deadline for certification of Hart Intercivic's eSlate with a voter verified paper audit trail ("VVPAT"), subject to the following conditions:

1. That on or before November 15, 2005, the County finally selects the Hart eScan as its primary certified voting system and the Hart eSlate with VVPAT as its ADA-compliant voting system¹;
2. That, based on the County's selections in paragraph 1 and at the request of the County, the Secretary purchases the Hart eScan on the County's behalf;
3. That each of the deadlines set forth in the Request is met;
4. That on or before November 15, 2005, the County or Hart shall provide to the Secretary documentation evidencing Hart's compliance with the November 1, 2005, deadline for submitting its VVPAT system for certification to an Independent Testing Authority (ITA), as represented in the Request;
5. That Hart's eSlate with VVPAT is:

¹ As used herein, "ADA-compliant voting system" shall mean any of the following: (i) the Hart eSlate with VVPAT, (ii) the ES&S Precinct County Optical Scan Model M100 with AutoMARK, (iii) the ES&S iVotronic with Real Time Audit Log, or (iv) the Diebold AccuVote-TSx with AccuVote Printer Module.

- a. in the final stage of ITA (i.e., ITA has approved in writing the source code) by not later than November 30, 2005;
 - b. fully certified by not later than December 20, 2005;
- 6. That the County shall provide to the Secretary, on or before November 15, 2005, documentation evidencing:
 - a. that the County has entered into a written contract (hereinafter referred to as the “Contingency Contract”), with Diebold or ES&S (“Back-up Vendor”), to which the Secretary shall be party, and which must at a minimum provide:
 - i. that if Hart does not meet the deadlines set forth in paragraph 5, above, that the Back-up Vendor shall sell, and the Secretary shall purchase (on behalf of the County), a certified ADA-compliant voting system and other related services (the specific identity of which shall be set forth in the Contingency Contract)²;
 - ii. the Contingency Contract price (i.e., the total cost for the purchase of the certified ADA-compliant voting system and other related services), and that the County shall be responsible for the payment of the amount of the Contingency Contract price that exceeds the amount allocated to the County as set forth in Exhibit B (“HAVA funds”); and
 - iii. the dates by which the Back-up Vendor will provide the certified ADA-compliant voting system and other related services to the County, which dates must be approved by the Secretary (and which approval shall not be unreasonably withheld);
 - b. the availability of, and that the County is authorized to expend, any funds necessary to pay the Contingency Contract price (as specified pursuant to paragraph 6.a.ii, above), less the County’s HAVA funds;
- 7. That if Hart does not meet the deadlines set forth in paragraph 5, above³, the Secretary, after consultation with the County, at his option may:
 - a. proceed with the purchase of the certified ADA-compliant voting system pursuant to the Contingency Contract (with the payment of any costs

² As used herein, a “certified ADA-compliant voting system” shall mean an ADA-compliant voting system that is a “certified voting system” as that term is defined in Section 1.02 of the Settlement Agreement and Release between the Secretary, Hart, Maximus Inc., and the County.

³ Hart’s failure to meet any of the above deadlines would not constitute a breach of the Settlement Agreement.

above and beyond the HAVA funds to be the responsibility of the County); or

- b. choose to (i) grant an additional extension, (ii) support a request by the County to the Ohio Board of Voting Machine Examiners to provisionally or temporarily certify Hart's VVPAT, to the extent authorized by law, and/or (iii) take any other actions deemed reasonably necessary to ensure compliance with federal and state law;
8. That if at any time prior to December 20, 2005, a vacancy in a federal elected office is announced such that the County shall be required to conduct a special election for a federal office in 2006, the Secretary may exercise his options in accordance with paragraph 7; and
9. That the County and Hart agree to all of the foregoing terms, as part of a written Settlement Agreement and Release between the County, Hart and the Secretary (in full settlement of the lawsuit pending in the Franklin County Court of Common Pleas, Case No. 05 CVH 05 4855, styled *Elections Systems & Software, Inc., et al. v. J. Kenneth Blackwell*, Ohio Secretary of State).

If you have any questions regarding this Directive, please do not hesitate to contact Judy Grady, Director of Elections, at 614-466-2585.

Sincerely,

A handwritten signature in cursive script that reads "J. Kenneth Blackwell".

J. Kenneth Blackwell