

JP398519:tlg:2094269_2

February 13, 2004

VIA MESSENGER

Marc Carrel, Vice Chair
Voting Systems and Procedures Panel
300 South Spring Street
Los Angeles, CA 90013

Re: Request for Information

Dear Mr. Carrel:

I am writing on behalf of Diebold Election Systems, Inc. ("DESI") in response to the letter dated January 15, 2004 from Mr. Mark Kyle of the Voting Systems and Procedures Panel ("VSPP") (the "VSPP Letter"). Among other things, that letter requested that DESI continue "cooper[at]ing with the [VSPP's] investigation and provide certain information to the VSPP and [its technical] consultant, Steve Freeman." DESI has been and will continue to cooperate with the VSPP. At your request, DESI's response and accompanying documents are being sent to your attention rather than to Mr. Kyle.

The VSPP Letter notes that the Diebold TSx direct recording electronic ("DRE") voting system was State certified subject to three conditions – conditions DESI has satisfied and continues to satisfy. First, DESI was to appear at the panel's December 16, 2003 hearing. DESI did so. Second, DESI was asked to pay for the audit of seventeen Counties using Diebold software or hardware. DESI has paid for that audit. Third, DESI has been asked to cooperate with VSPP's investigation. DESI is doing so and, as discussed below, DESI promptly responded to a number of new requests made since receipt of the VSPP Letter.

As you know, the VSPP Letter requested production of the identified information by "Friday, February 15, 2004." (Although February 15 is a Sunday, this response is being delivered Friday, February 13, 2004.) As I mentioned in several telephone conversations with you and with Mr. Randy Riddle, the 30 day time frame for responding to the VSPP Letter is not reasonable given the volume of documents to be reviewed, the intervening requests that have been made by members of the VSPP, and the resources required to ensure that Mr. Freeman received the information he requests. As the VSPP letter itself recognizes, the information requested is "an extensive list" and "it will take some time to collect and forward the information." Before receiving the VSPP letter, DESI had indicated that 120 days would be needed to make an appropriate response. Nonetheless, DESI has collected a substantial portion of the requested information and is delivering that information today. DESI will continue to

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collect additional information and will provide you a further status report and time estimate before the end of next week.

On Thursday, February 5, 2004, Mr. Kyle and Mr. Riddle made a further request for the immediate production of certain DESI computer source code and related materials. I have been in daily communication with Mr. Riddle and others working on the production of the source code and related materials, including preparation of a Document License And Confidentiality Agreement (“Agreement”) – an Agreement that has required extensive negotiations. The VSPP’s new request for source code has been a time-consuming process in itself. But DESI is and has been prepared to deliver the requested information upon execution of the Agreement.

I mention the issue of the source code because it has required a significant amount of time, and because DESI sought to address this request in the immediate time-frame requested by Mr. Kyle and Mr. Riddle. DESI does not object to the VSPP prioritizing its requests for information from DESI. At the same time, additional requests impact the time in which DESI can complete collection of information previously requested by the VSPP Letter.

Again, all of this being said, DESI has made significant progress towards collecting the information requested by the VSPP. As we discussed earlier today, many of the documents requested by the VSPP Letter that are being delivered by DESI require that they are treated in a confidential fashion. To avoid delay in the delivery of documents, you have agreed that the VSPP will treat as “Confidential” those documents so designated by DESI. Pending finalization of a mutually agreeable confidentiality agreement, I am enclosing the draft of the Confidentiality And Non-Disclosure Agreement that I sent to Mr. Riddle last night. Subject to finalization of this agreement, the documents designated by DESI as “Confidential” are to be treated consistent with this draft agreement.

The following paragraphs summarize the status of DESI’s collection of the requested information and the enclosed information, using the same paragraph numbers as in the VSPP Letter. The documents produced have been assigned the following document control numbers: VS101 0001 0001 through VS101 0001 0945; VS101 0002 0001 through VS101 0002 0056; VS101 0003 0001 through VS101 0003 0207; VS101 0004 0001 through VS101 0004 0057; and VS101 0005 0001 through VS101 0005 0119.

1. As requested, DESI has been providing Mr. Freeman information as requested. DESI has devoted substantial resources in its effort to provide responses to Mr. Freeman. DESI has had almost daily communications with Mr. Freeman, has delivered hardware to him, and has met with him – all in an effort to comply with item number one in the VSPP Letter. To the extent questions remain, DESI will continue to respond to Mr. Freeman as requested by the VSPP. We want you to be aware that this has been an intensive process over the past four weeks.

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9. As I understand things, DESI does not modify the Smart Card hardware or software used in DESI's TS and TSx platforms in California. A standard Windows CE serial port driver is used.

10. DESI is ready to consider any additional reasonable requests that the VSPP may have concerning its investigation. Indeed, as discussed above, after receiving the VSPP Letter, the VSPP made a further information request for certain source code and related materials and DESI has taken steps to comply with that request.

Lastly, you have asked that DESI designate a contact person to deal with the VSPP and the Secretary of State's office for all technical issues and who will direct software modifications to your office. If agreeable to you, DESI would like to designate Marvin Singleton. His cell phone number is (214) 686-0259. In the event it becomes necessary to change this contact person, DESI will notify your office

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If you have any questions about the enclosed information or this initial response, please contact me at (213) 243-2582.

Very truly yours,

Daniel D. McMillan

Encls.