DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA
OFFICE OF VOTING SYSTEMS TECHNOLOGY ASSESSMENT
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April 1, 2009

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 09053

TO: All County Clerks/Registrars of Voters

FROM: Ryan Macias
Voting Systems Analyst

RE: Voting Systems: Withdrawal of Approval, Premier Election Solutions' GEMS version 1.18.19

The Secretary of State has withdrawn approval of Premier Election Solutions' GEMS version 1.18.19.

Attached is a copy of the Withdrawal of Approval document.

Attachments (1)

State of California

SECRETARY OF STATE

WITHDRAWAL OF APPROVAL OF
PREMIER ELECTION SOLUTIONS, INC./
DIEBOLD ELECTION SYSTEMS, INC.,
GEMS 1.18.19

Whereas, pursuant to Elections Code section 19201, no voting system, in whole or in part, may be used unless it has received the approval of the Secretary of State; and

Whereas, Elections Code section 19222 requires that I, as Secretary of State for the State of California, conduct periodic reviews of voting systems to determine if they are defective, obsolete or otherwise unacceptable; and

Whereas, in 2004 three voting system configurations incorporating Premier Election Solutions, Inc./Diebold Election Systems, Inc., Global Election Management System (GEMS) version 1.18.19 received federal qualification from the National Association of State Election Directors (NASED) and approval by the Secretary of State for use in California; and

Whereas, on December 3, 2008, the Registrar of Voters of Humboldt County notified Secretary of State staff that an error in the GEMS version 1.18.19 software had caused the deletion of 197 tallied ballots from the results reported by GEMS and certified by the Registrar of Voters for the November 4, 2008, General Election in Humboldt County; and

Whereas, on December 4, 2008, representatives of Premier Election Solutions, Inc., confirmed to Secretary of State staff that the deletion of the tallied ballots in Humboldt County was caused by an error in the GEMS version 1.18.19 software; and

Whereas, Secretary of State staff conducted an investigation to identify the exact nature of the software error in GEMS version 1.18.19 and to determine the event or events that triggered it, resulting in the deletion of the tallied ballots; and

Whereas, Secretary of State staff confirmed that an error in the GEMS version 1.18.19 software caused the deletion from the election results of the first deck of tallied ballots (identified as "Deck 0" by GEMS) when an elections official deleted a different deck several weeks after Deck 0 had been tallied; and

Whereas, in the course of its investigation, Secretary of State staff identified the following issues: The presence of "Clear" commands that allow audit trail records to be permanently deleted; certain event records that contained inaccurate date/time stamps; and the failure of the audit logs to record important events, such as intentional deletion of decks of ballots, all of which appear to violate the 1990 federal voting system standards that would have required denial of federal qualification had the deficiencies been detected during testing; and

Whereas, on March 2, 2009, I submitted to the United States Election Assistance Commission (EAC) a report on the results of the investigation entitled "California Secretary of State Debra Bowen's Report to the Election Assistance Commission Concerning Errors and Deficiencies in Diebold/Premier GEMS Version 1.18.19" (Report to the EAC); and

Whereas, on March 13, 2009, the Secretary of State Office of Voting Systems Technology Assessment submitted a Staff Report entitled "Premier Election Solutions' Global Election Management System (GEMS) Software Version 1.18.19" (Staff Report), summarizing the findings of the Report to the EAC; and

Whereas, at a duly noticed public hearing on March 17, 2009, the Premier Election Solutions, Inc., representative testified to the existence of the "Deck 0" software error, the presence of "Clear" commands in audit logs, the assignment to audit log event records of inaccurate date/time stamps and the failure of the audit logs to record certain important events, and stated that the company did not object to withdrawal of approval for use in California of GEMS version 1.18.19; and

Whereas, pursuant to Elections Code section 19222, I, as Secretary of State, am authorized to withdraw approval previously granted of any voting system or part of a voting system if I determine that voting system or any part of that voting system to be defective or otherwise unacceptable; and

Whereas, I have reviewed GEMS version 1.18.19, a part of three voting systems approved in 2004 for use in California, and I have reviewed and considered the Report to the EAC and the Staff Report; the testimony of Premier Election Solutions, Inc., and the public testimony presented at the duly noticed public hearing held on March 17, 2009; and the comments submitted by letter, facsimile transmission, and electronic mail; and

Whereas, pursuant to Elections Code section 19222, six months' notice must be given before withdrawing approval previously granted of any voting system or part of a voting system unless I, as Secretary of State, for good cause shown, make a determination that a shorter period is necessary; and

Whereas, shortened notice of possible withdrawal of approval of GEMS version 1.18.19 was given on February 11, 2009; and

Whereas, pursuant to Elections Code section 19222, the Secretary of State may withdraw the previous approval of a voting system or part of a voting system, effective six months following the withdrawal; now

Therefore, **I, Debra Bowen, Secretary of State for the State of California, find and determine, pursuant to Division 19 of the Elections Code, the following:**

Shortened notice of possible withdrawal of approval was necessary due to the serious nature of the defects and deficiencies identified; and

The Premier Election Solutions, Inc./Diebold Election Systems, Inc., GEMS software, version 1.18.19, which was previously approved, is defective or unacceptable, and its approval, and the approval of any voting system of which it is a part, for use in subsequent elections in California is hereby withdrawn, effective six months after the signature date below.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of California, this 30th day of March, 2009.

DEBRA BOWEN
Secretary of State