



John A. Pérez, Chair
Stephen Kaufman, Vice Chair

Michael Bustamante
Tal Finney
Carl Guardino

Voting Modernization Board

Modernizing Voting Equipment in California

VOTING MODERNIZATION BOARD BOARD MEETING MINUTES

Monday, February 9, 2004
Secretary of State Building

- I. Call to order by Chairman John A. Pérez at 10:20 am.
- II. Roll Call administered by Debbie Parsons, quorum established.

Present: John A. Pérez, Stephen Kaufman, Tal Finney, Michael Bustamante
Absent: Carl Guardino

III. Public Comment: None

IV. ADOPTION OF OCTOBER 15, 2003 MEETING MINUTES

A motion was made by Stephen Kaufman and seconded by Tal Finney to adopt the meeting minutes of the October 15, 2003 meeting. Motion passed.

- V. STAFF REPORT ON RELATED ISSUES: Receive staff report on the following issues.
 - (A) Secretary of State Voter Verified Paper Audit Trail Directive
Michael Wagaman gave staff report explaining the directives of Secretary of State Kevin Shelley regarding the deployment of DRE voting systems in California. As of July 1, 2006, all voting systems must include a voter verified paper audit trail (VVPAT). DRE systems already in use on that date will have to be replaced or modified to incorporate an accessible VVPAT feature, if they do not already contain one. The Voting Systems and Procedures Panel (VSP) directed staff to complete VVPAT standards, which is currently under internal review before going on public display, and then the proposed standards would go back to the VSP for final approval.

Board member Bustamante questioned staff if the counties would be eligible for additional funding to help pay for the Secretary's new requirement. Mr. Mott-Smith replied that the Secretary believes there is a responsibility by the Secretary of State to identify funding, but he has not established how yet.

Chairman Pérez stated the Board's concerns that this new requirement will hurt the counties financially due to county financial restraints, especially due to the Special Election costs.

Mr. Mott-Smith stated that some voting system vendors are putting language in their contracts with the counties that address the VVPAT issue, and that they will pay for the additional paper trail costs. However, this does not apply to all the counties, especially the counties that have already purchased systems before the Secretary's order came out.

- (B) Payment Request Policy Question. Jana Lean gave background on issue and requested the Board make a policy decision on the following question: "Should the VMB pay on an unpaid invoice, up to or equaling a county's funding award, with a "promise" from the county that they will pay their county match amount once they have received HAVA 102 money?"

Marsha Wharf, County Registrar from Mendocino County, encouraged the Board to consider this policy change due to the fact that her county had no other money, besides the HAVA 102 money to pay for their VMB match amount.

Chairman Pérez instructed staff to prepare standard language for counties to sign off on, and they would approve as long as this promise to pay was in writing from the county.

A motion was made by Michael Bustamante and seconded by Stephen Kaufman to approve the policy change and pay on an unpaid invoice, up to or equaling a county's funding award, with a "promise" from the county that they will pay their county match amount once they have received HAVA 102 money. The chair will approve the language in the promissory letter, which will be signed by the counties. Motion passed.

- (C) Adopt 2004 Proposed VMB Meeting Schedule

A motion was made by Tal Finney and seconded by Stephen Kaufman to approve the Proposed 2004 VMB Meeting Schedule, with dates subject to change.

VI. PROJECT DOCUMENTATION PACKAGE REVIEW AND FUNDING AWARD

APPROVAL: Receive staff reports from Jana Lean and John Mott-Smith and recommendations for approval of funding awards.

A. Los Angeles County – Review of Project Documentation Package

Staff report given by Jana Lean. Los Angeles County plans to use a three-phased approach to upgrade their voting system. Los Angeles County has secured the Phase 1 voting system equipment from Diebold Elections Systems, which was first used for the early voting pilot project during the November 2000 General Election. The Phase 1 voting system was fully implemented during the November 2002 General Election. Los Angeles County's "Phase 1 – Project Documentation Package" meets the requirements for completeness. The Diebold AccuVote-TS touch screen units are certified for use in California. The staff recommendation was to approve Los Angeles County's Phase 1 Project Documentation Package and issue a funding award letter in the amount of \$639,071.25.

After the staff report, Conny McCormack, Registrar of Voters, addressed the Board. Ms. McCormack informed the Board that her county would need an additional phase in order to comply with Secretary Shelley's recent decision requiring the counties to have a Voter Verified Paper Audit Trail (VVPAT). They cannot issue a RFP because currently a certified system containing a VVPAT does not exist. The additional phase would be to stay with InkaVote longer and make it compliant with HAVA requirements by the January 2006 deadline.

The Board questioned Ms. McCormack on the reasons for having so many phases to convert to a new voting system. Because of the VVPAT, she had to cancel the RFP they had ready to release, therefore, delaying the entire process by many months. She said the \$100 million contract could take years to negotiate with all the attorneys. The increased cost for the additional fourth phase to make InkaVote compliant is \$15-18 million.

A motion was made by Stephen Kaufman and seconded by Michael Bustamante to approve Los Angeles County's "Phase 1 - Project Documentation Package" and issue a Funding Award letter in the amount of \$639,071.25. Motion passed.

B. Tehama County – Review of Project Documentation Package

Staff report given by Jana Lean. Tehama County began receiving their new voting equipment in late December 2003 and will begin to use this equipment at the March 2, 2004 Presidential Primary Election. Tehama County's contract with Sequoia Voting Systems, Inc. does not contain an explicit "upgrade" option for retrofitting the DRE units with a VVPAT component. The County plans to wait for clarification from the Secretary of State on the exact specification to be required for the VVPAT before they negotiate with Sequoia to retrofit the DRE units. Tehama County's "Project Documentation Package" meets all of the requirements for completeness. The Sequoia AVC Edge DRE and Optech 400 C are certified for use in California.

The staff recommendation was to approve Tehama County's Project Documentation Package and issue a funding award letter in the amount of \$386,407.44.

A motion was made by Tal Finney and seconded by Michael Bustamante to approve Tehama County's "Project Documentation Package" and issue a Funding Award letter in the amount of \$386,407.44. Motion passed.

C. San Diego County – Review of Project Documentation Package

Staff report given by Jana Lean. San Diego County began receiving their new voting equipment in late December 2003 and will begin to use this equipment at the March 2, 2004 Presidential Primary Election. San Diego County's contract with Diebold includes a provision to retrofit the touch screen units to comply with the Secretary of State's new VVPAT directive at no additional cost to the county.

John Mott-Smith presented the staff recommendation to approve San Diego County's Project Documentation Package and issue a funding award letter in the amount of \$16,726,146.64 subject to three conditions: 1) documentation has been received by the Secretary of State that the AccuVote-TSx Touch Screen voting system has received appropriate federal approval; and 2) the AccuVote

TSx Touch Screen voting system has been certified by the Secretary of State without special conditions; and 3) that an image of each of the voted ballots cast on each of the AccuVote-TSx Touch Screen units at the March 2, 2004 statewide primary elections will be printed out on paper during the official canvass of that election, the cost of which will be or has been borne by Diebold Elections System, Inc.

Chairman Pérez questioned staff on the need for the conditions in their staff recommendation. This Board's responsibility is to follow the language and requirements of Proposition 41 and does not believe this body should act on conditions. Condition three, in particular, was deemed inappropriate for the Board to place in regards to the requirements of Prop. 41.

Sally McPherson, Registrar of Voters for San Diego County, addressed the Board. Stated that San Diego was being singled out. San Diego changed voting systems to a certified system in November 2003. She confirmed with Tony Miller, Secretary of State Elections Counsel, that the system was certified for use in California. She provided a packet to the Board on Diebold's certification she received. McPherson stated that San Diego County took the change of voting systems seriously and it was important for them to have SOS certification, which was certified on November 20, 2003, before they purchased the new system.

Board member Bustamante expressed concerns over reports that the Secretary of State had issues and concerns with Diebold. He wanted assurance from staff that any concerns were resolved. Tony Miller and John Mott-Smith assured Board member Bustamante that the Diebold issues were resolved. Mr. Mott-Smith said that the SOS issue was with the funding award letter wording. He also explained that the state tests against federal testing requirements, and as soon as the Secretary receives federal approval, he would certify the Diebold TSx. It was the duty of the Voting Systems and Procedures Panel, not the VMB, to deal with conditions and certification.

The Board members all agreed that it is not the responsibility of these members to certify systems, or to award Prop 41 funds to counties using systems that have not been certified for use by the Secretary of State. Since this system was "conditionally certified" by the Secretary of State, the VMB will issue the funds to San Diego County after the conditions of certification are met and it gets certified by the Voting Systems Panel.

Sally McPherson again expressed her frustration over the conditions and indicated that SOS staff assured her that Diebold's certification status would not impact the use of the equipment in her county. Board member Bustamante questioned SOS staff on why they said the TSx was certified. Mr. Mott-Smith replied that it had always been "conditionally certified" and San Diego County was aware of the conditional certification.

A motion was made by Michael Bustamante to approve San Diego County's Project Documentation package and issue a funding award letter in the amount of \$16,726,146.62, without any conditions. Tal Finney and Stephen Kaufman voted no, there were no seconds, the motion failed.

After further discussion, the Board agreed to vote to award San Diego County their allocated amount upon certification of their voting system so the county does not have to go before the VMB again once their system is certified. The funding award letter standard language was changed to include

“The Voting Modernization Board has determined that this award amount satisfies all VMB policies and procedures upon certification by the Secretary of State”.

A motion was made by Tal Finney and seconded by Michael Bustamante to approve San Diego County’s “Project Documentation Package” and issue a Funding Award letter in the amount of \$16,726,146.62, upon certification by the Secretary of State. Motion passed.

VII. STATUS REPORT ON COUNTY PROJECT DOCUMENTATION SUBMITTALS

Jana reported that 20 county project documentation packages have been approved to date, seven of which are being done in phases. Chairman Pérez asked for this agenda item to be moved to the March 18, 2004 meeting agenda for further discussion.

VIII. ADJOURNMENT

There being no further business or public comment to come before the Board, a motion was made by Tal Finney and seconded by Michael Bustamante to adjourn the meeting at 1:05 pm. All Ayes, Motion passed.

Minutes submitted by Debbie Parsons