Wisconsin Elections Commission

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<u>Via U.S. Mail and Email</u>

October 9, 2019

Mr. Steve Pearson
Vice President of Certification
Election Systems & Software
11208 John Galt Blvd.
Omaha, NE 68137

Mr. Pearson:

On September 24, 2019 the Wisconsin Elections Commission ("WEC" or "Commission") granted approval for the ES&S EVS 6.0.4.0 and EVS 6.0.5.0. As you are aware, the Commission approved the ExpressVote, and its associated hardware versions, but withheld approval for use of the ExpressVote in tabulation mode. Therefore, any ExpressVote used as a ballot marking device in Wisconsin may not also be programmed to tabulate ballots. This decision is consistent with previous statutory interpretations and certifications of other voting equipment systems with similar functionality.

WEC staff tested and the Commission approved the following hardware versions for the ES&S EVS 6.0.4.0:

Equipment	Hardware Version(s)	Firmware Version	Type
DS200	1.2.1 1.2.3 1.3, 1.3.11	2.17 4.0	Polling Place Digital Scanner and Tabulator
DS450	1.0	3.1.1.0	Mid-range Central Count Digital Scanner and Tabulator
DS850	1.0	3.1.1.0	High-speed Central Count Digital Scanner and Tabulator
ExpressVote HW 1.0	1.0	1.5.2.0	Universal Voting System
ExpressVote HW 2.1	2.1.0.0 2.1.2.0	2.4.5.0	Hybrid Universal Voting System and precinct count tabulator

Wisconsin Elections Commissioners
Dean Knudson, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Mark L. Thomsen

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Administrator
Meagan Wolfe

Staff also reviewed and the Commission approved the following software, which is included in the EVS 6.0.4.0 suite:

Software	Version
ElectionWare	5.0.4.0
ES&S Event Logging Service (ELS)	1.6.0.0
ExpressVote Previewer (HW 1.0)	1.5.2.0
ExpressLink	1.5.0.0
Removable Media Service (RMS)	1.5.1.0

WEC staff tested and the Commission approved the following hardware versions for the ES&S EVS 6.0.5.0:

Equipment	Hardware Version(s)	Firmware Version	Type
DS200	1.2.0.0 1.3.0.0 1.3.1.1	2.17.5.0	Polling Place Digital Scanner and Tabulator
DS450	1.0	3.1.1.0	Mid-range Central Count Digital Scanner and Tabulator
DS850	1.0	3.1.1.0	Central Count Digital Scanner and Tabulator
ExpressVote HW 1.0	1.0	1.5.3.0	Universal Voting System
ExpressVote HW 2.1	2.1.0.0 2.1.2.0	2.4.6.0	Hybrid Universal Voting System and precinct count tabulator

Staff also reviewed and the Commission approved the following software, which is included in the EVS 6.0.5.0 suite:

Software	Version
ElectionWare	5.0.5.0
ES&S Event Logging Service (ELS)	1.6.0.0
ExpressVote Previewer (HW 1.0)	1.5.3.0
ExpressLink	1.5.0.0
Removable Media Service (RMS)	1.5.1.0
Regional Results	1.3.0.0

In order to maintain approval for use in Wisconsin, a voting system manufacturer must comply with the requirements of Chapter EL 7 of the Wisconsin Administrative Code. A copy of this chapter has been enclosed for your review. Specifically, Election Systems & Software (ES&S) must:

1. Pay the WEC's costs for testing this voting system. An invoice will arrive separately.

2. Furnish a copy of the programs, documentation, and source code for these systems to be placed in escrow with EscrowTech International, Inc.

3. Provide the WEC with a list of software components, pursuant to Wis. Stat. § 5.905, that "record and tally the votes cast with this system." For the purposes of this condition, "software components" include vote-counting source code, table structures, modules, program narratives and other human-readable computer instructions used to count votes with this system. Should a valid request for inspection of software components under Wis. Stat. § 5.905(4) be made, the Commission will use this list to assist in making its determination as to what is available for inspection under Wis. Stat. § 5.905(2).

4. Ensure that the election results from this system can be exported on election night into the WisVote system in a format specified by the Commission.

5. Inform the WEC regarding any municipalities in Wisconsin which agree to use this voting system as well as any states or other jurisdictions which approve this voting system for use.

6. Complete the attached Certificate of Performance Compliance: Delivery of Voting System for each municipality. One certified copy must be provided to the municipality upon delivery of the voting system and one certified copy must be provided to the WEC.

7. Immediately notify the WEC of any changes to this voting system. The Wisconsin Elections Commission will determine the procedures for approving any changes for use in Wisconsin on a case-by-case basis.

8. Submit an Engineering Change Order via an approval application for de minimis changes; however, any material changes require a full application and review process.

9. In the instance of voluntary withdrawal, involuntary decertification by the US EAC (or other Federal agency responsible for voting systems certification), or revocation of approval by the Commission of ES&S EVS 6.0.4.0 and EVS 6.0.5.0 (including any component), ES&S shall provide affected customers with substitute tabulation equipment such that any impacted election may be properly tabulated pursuant to Wis. Stat. § 5.40.

Furthermore, the WEC enacted additional requirements for the ES&S EVS 6.0.4.0 and EVS 6.0.5.0. The Commission determined that the following continuing conditions shall remain ongoing for purchasing localities and ES&S.

1. As a continuing condition of the Commission's approval, that ES&S may not impose customer deadlines contrary to requirements provided in Wisconsin Statutes, as determined by the Commission. In order to enforce this provision, local jurisdictions purchasing ES&S equipment shall also include such a provision in their respective purchase contract or amend their contract if such a provision does not currently exist.

2. As a continuing condition of the Commission's approval, this system must always be configured to include the following options:

   a. Automatic rejection of crossover and overvoted ballots with or without the option to override.
   b. Automatic rejection of all improper ballots except blank ballots.
   c. Digital ballot images to be captured for all ballots tabulated by the system.

3. Election inspectors shall remake any absentee ballots automatically rejected where the override function is not used so that the ballot count is consistent with total voter numbers.

4. As a continuing condition of the Commission's approval, voting systems purchased and installed as part of EVS 6.0.4.0 or 6.0.5.0 must be configured in the same manner in which they were tested, subject to verification by the Commission or its designee. Once installed, the configuration must remain the same and may not be altered by ES&S nor by state, county, or municipal officials except as approved by the Commission.

5. As a condition of the Commission's approval, ES&S must provide confirmation of an agreement between ES&S and Microsoft to provide continuing support at no additional cost for all customers utilizing election equipment with the Windows 7 operating system beginning on January 14, 2020 through January of 2023.

6. Any municipality using a ballot marking device approved as part of EVS 6.0.4.0 or EVS 6.0.5.0, must include ballots marked by that device as part of the pre-audited group of ballots used to conduct its pre-election logic and accuracy voting equipment test, under Wis. Stat. § 5.84(1).

7. As part of US EAC certificate: ESSEVS6040, only equipment included in this system are allowed to be used together to conduct an election in Wisconsin. Previous versions that were approved for use by the former State Elections Board and former Government Accountability Board are not compatible with the new ES&S voting system and are not to be used together with the equipment seeking approval by the Commission, as this would void the US EAC certificate. If a jurisdiction upgrades to EVS 6.0.4.0, it needs to upgrade each and every component of the voting system to the requirements of what is approved herein. Likewise, if a jurisdiction upgrades to EVS 6.0.5.0, it needs to upgrade each and every component of the voting system to the requirements of what is approved herein.

8. As a condition of approval, ES&S shall abide by applicable Wisconsin public records laws. If, pursuant to a proper public records request, the customer receives a request for materials that might be proprietary or confidential, the customer will notify ES&S, providing the same with the opportunity to either provide the customer with the record that is requested for release to the requestor, or to advise the customer that ES&S objects to the release of the information, and to provide the legal and factual basis of the objection. If for any reason, the customer concludes that it is obligated to provide such records, ES&S shall provide such records immediately upon customer's request. ES&S shall negotiate and specify retention and public records production costs in writing with customers prior to charging said fees. In absence of meeting such conditions of approval, ES&S shall not charge customer for work performed pursuant to a proper public records request, except for the "actual, necessary, and direct" charge of responding to the records request, as that is defined and interpreted in Wisconsin law, plus shipping, handling, and chain of custody costs.
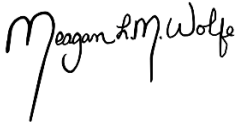
Please note that noncompliance with these, or any other requirements contained in Wisconsin Statutes or the Wisconsin Elections Commission Administrative Code, may result in the suspension or withdrawal of the Commission's approval of this voting system.

Thank you for your attention to these issues. If you have any questions, please do not hesitate to contact either myself or Richard Rydecki of the Wisconsin Elections Commission.

Sincerely,

Wisconsin Elections Commission

Meagan Wolfe
Administrator