
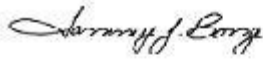




June 17, 2010		AGENDA ITEM		Item 16
<input type="checkbox"/> Ordinance		<input type="checkbox"/> Resolution		<input checked="" type="checkbox"/> Other
Department: Elections		File Number: VC-1275393019331-A		
Division: Elections				
Subject: Assignment and Assumption of Elections Equipment Contract				
Account Number(s): x x for \$0.00				
Total Item Budget: N/A				
Staff Contact(s): Ann McFall Phone: 736-5930 ext. 2565				
<p>Summary/Highlights: Presently, the county has contracts for touch screen and optical-scan Accu-Vote voting machines with Premier Election Solutions (Premier) that expire in 2010 and 2015, respectively. On September 1, 2009, Premier was acquired by Election Systems and Software (ES&S) d/b/a Premier Election Solutions. Shortly thereafter, a federal antitrust lawsuit was initiated which resulted in the U.S. Department of Justice requiring ES&S to divest itself of all the primary assets of Premier which included the contracts. Pursuant to a federal court order, ES&S assigned the county's contracts to Dominion Voting Systems (Dominion).</p> <p>Dominion is a Canadian corporation specializing in voting machine technology and services that are currently in use by over 400 jurisdictions in the U.S. and Canada.</p>				
Recommended Motion: Approval				
Ann McFall Director Elections  Jeaniene Jennings Director Purchasing No Signature Present	OMB  Approved as to Budget Requirements	Legal  Approved as to Form and Legality	Marcy Zimmerman County Manager's Office  Approved Agenda Item For: June 17, 2010	
Council Action:		Modification:		
<input type="checkbox"/> Approved as Recommended <input type="checkbox"/> Approved With Modifications <input type="checkbox"/> Disapproved <input type="checkbox"/> Continued Date:				

Summary/Highlights Continued:

A copy of a consent to assignment and assumption of contract and related attachments, approved by Purchasing and Contracts and Legal staff, are attached to this agenda. Staff recommends acceptance of the assignment.

The Dominion Acquisition of Premier Election Systems Assets *Frequently Asked Questions for Premier Jurisdictions*

Q: What is Dominion is acquiring from ES&S in this transaction?

Dominion is acquiring from ES&S the primary assets of Premier Election Solutions, including all intellectual property, software, firmware and hardware for Premier's current and legacy optical scan, central scan, and touch screen voting systems, including all versions of the GEMS election management system. As part of the transaction, Dominion also acquired an irrevocable, perpetual license for the AutoMark voting terminals used by voters with disabilities, a similar license for the VoteRemote absentee vote-by-mail processing solution, and rights to spare parts, supplies and other resources necessary to support and service these installed systems. In addition, Dominion will acquire a percentage of existing Premier inventory.

Dominion has secured the right to hire current and former Premier employees and to enter into agreements with Premier dealers experienced in deploying and supporting these systems. In addition, the transaction requires that ES&S provide current Premier customers with the opportunity, without penalty, to terminate (or assign) their existing contracts and assign their contracts to Dominion. *(This was, in fact, a key requirement of the settlement agreement reached between ES&S and the U. S. Department of Justice to address DOJ's antitrust concerns).* The transaction also significantly restricts ES&S in bidding on new voting systems contracts using Premier equipment.

This transaction goes a long way towards restoring much-needed competition in the U. S. voting systems industry. For America's election administrators, that means more competitive pricing, increased innovation and better customer service. That's good for election officials, and it's good for voters as well.

Q: Why is this good for election officials and voters?

In all industries, vibrant competition ensures product innovation and improvements in service at fair prices. Vendors who are more responsive to the needs of customers will flourish. Competition is even more important in the election systems industry, considering how vital the voting process is to our democracy. This transaction provides a significant boost to competition in the U. S. voting systems marketplace, assuring that election officials at the state, county and municipal level have options in choosing a partner to support their election process.

Dominion brings to the market permanent research and development, with some 60 engineers on staff to keep the innovation pipeline flowing, a track record of strong customer service and responsiveness, and a deep understanding of the needs and expectations of election administrators. We listen to our customers, invite comments and suggestions for improvements, and, based on that valuable feedback, work hard to enhance our products and performance.

Q: Why is this opportunity good for Dominion?

We're excited about the opportunity to expand our presence in the U. S. voting systems market, and we believe Dominion has much to offer customers in every region of the country. This transaction allows us to complement our already strong team with some of the best resources in the industry and to diversify our solution set. Today we are the primary provider of voting systems to jurisdictions in the state of New York, serving 52 of the state's 62 counties, and we have proven our capabilities in that very challenging assignment. We also have a very strong customer base in Canada, and we have demonstrated the quality of our systems in many Canadian elections, as well as overseas. In May 2010 the Republic of the Philippines conducted its first-ever national election utilizing automated voting systems. Dominion provided the precinct count optical scan technology that won accolades for its accuracy, speed and reliability in an extremely challenging environment. Our goal is to continue to expand geographically, into additional markets in the U. S., and this transaction provides the opportunity to do so.

Q: What role did the U. S. Department of Justice, and the group of state attorneys general that joined in the suit against ES&S, have in this transaction?

As you may know, on March 8, 2010 the U. S. Department of Justice, along with nine state attorneys general, filed an antitrust lawsuit in U. S. District Court in Washington, D.C. alleging that ES&S' 2009 acquisition of Premier harmed competition in the elections marketplace. At the same time, the DOJ filed a proposed settlement with ES&S that required the divestiture of the Premier assets to a purchaser approved by the Department. Negotiations subsequently took place between ES&S and Dominion to execute a transaction in accordance with the DOJ's proposed settlement, and the Department, as well as the state attorneys general, have reviewed and approved all aspects of the purchase agreement. A key consideration for the DOJ and the nine state attorneys general in evaluating a potential buyer was the purchaser's financial viability, and ability to invest in new products and services going forward. By earning approval from these federal and state legal authorities, Dominion clearly passed those tests.

Q: Explain what happens to existing service and support contracts customers currently have with Premier Election Solutions.

Under the terms of the purchase agreement, ES&S is required to provide the opportunity to all customers with existing contracts with Premier to either : 1) terminate their existing contract and negotiate a new agreement with Dominion, or 2) directly assign the current contract, including all terms and provisions, to Dominion. These provisions relate to all contracts, including service contracts, extended warranty agreements and software license agreements. All Premier customers are being provided letters that can be used to execute either of these options.

Q: What will be the status of existing warranties if a contract is assigned to Dominion?

The warranty provisions of existing contracts will continue unchanged. Dominion will also offer warranty coverage to jurisdictions that choose to negotiate new service and support contracts.

Q: Until now, Dominion's U.S. footprint has been limited to New York. How will you be able to support Premier customers in 32 states from Alaska to Florida?

Even before this transaction closed, Dominion began building a national customer service infrastructure that can readily support existing Premier customers in every region of the United States. That process begins with experienced, knowledgeable professionals with deep experience with Premier systems. That effort is being led by Steve Moreland, the former vice president of customer service for Premier, who will direct Dominion's customer service team supporting Premier customers.

Q: Does Dominion have the financial strength to rapidly build this service infrastructure and support new customers?

Yes, absolutely. Dominion, which is privately held, is profitable and very well-capitalized. Before earning the DOJ's approval as the purchaser, Dominion had to demonstrate to the DOJ and the nine state attorneys general its financial strength and capability not only to operate in the short term, but to invest in continued product and service enhancements in the long term. Dominion has a strong record of successfully deploying and supporting voting systems. Some 90,000 Dominion ImageCast Precinct Optical Scan Tabulators have been successfully deployed in elections around the world.

Q: As a result of this transaction, who owns the software, firmware, hardware designs, etc. that make up the Premier voting systems?

Dominion now owns all the intellectual property associated with all versions, past, present and in development, of Premier's voting systems, including all versions of GEMS and the ASSURE 1.2 suite of products. Dominion has acquired tooling, a portion of existing Premier inventory, and parts and components necessary to support installed systems.

Q: What about the future for our Premier equipment? I was already concerned about this becoming "orphaned" technology, and now there is a new transaction. Will Dominion offer future upgrades?

Yes we will! Dominion is committed to continuing to enhance the functionality, reliability and security of currently installed Premier products. With some 60 engineers on staff, our software and hardware engineering expertise is unsurpassed in the industry. We will apply those resources to the Premier product line, and continue the development of product enhancements to support our customers.

Q: What about the AutoMARK voter assist terminals? Will Dominion sell and support those units?

Yes. As part of the transaction, ES&S has provided to Dominion a fully paid-up, irrevocable, perpetual license to deploy and support the AutoMARK VAT. That means Dominion can support these systems for the duration of their service life.

Q: Can Dominion sell and support the VoteRemote absentee and vote-by-mail processing system?

Yes, as part of the transaction Dominion has similarly obtained a perpetual license for the VoteRemote absentee and vote-by-mail solution.

Q: Can Premier dealers enter into agreements with Dominion?

Yes, the transaction authorizes Dominion to enter into licensing and distribution agreements with current Premier dealers. Dominion is taking immediate steps to secure such agreements. We will provide more information on our dealer relationships as soon as it is available.

Q: My jurisdiction needs a reliable, proven partner to provide support. I'm not as familiar with Dominion as I am our previous provider. What more can you tell me about Dominion's experience? Why should I enter into an agreement with you?

First, talk to our customers. Ask them how we have performed. Ask them about our expertise, our technical capability and our responsiveness. Take a look at our work in New York State, where we provide a great voting system to 52 of New York's 62 counties. Talk to the experienced customer support team we are assembling, with decades of experience supporting elections using Premier equipment. Finally, think about an elections marketplace where only one large provider controls nearly all of the business. Consider what that would do to pricing, to innovation and to responsiveness to the customer.

We are a young company, but one that has grown as a result of our commitments to innovation and service. Put all those considerations together, and Dominion looks like a very attractive partner.

Q: My jurisdiction uses Premier touch screens. Until now Dominion has been focused on optical scan technology. Will you support and service the AccuVote-TS and AccuVote-TSX models?

A: Yes. Dominion has the software engineering, spare parts and access to supplies to continue to support Premier touch screen customers and their needs. The national customer support team we are assembling is also highly experienced supporting Premier touch screen systems.

Q: Who do I contact should I have any questions?

Please contact **Howard Cramer**, Vice President, Sales, at 303-990-1836, or **Steve Moreland**, Vice President, Customer Service, at 214-930-8659,

For More Information Visit: www.dominionvoting.com

CONSENT TO ASSIGNMENT AND ASSUMPTION OF CONTRACT

For good and valuable consideration, the County of Volusia, Florida (hereinafter "County") hereby consents to the assignment and assumption of that certain Master Agreements No. 1509, 5561, 5562, 5602 (hereinafter collectively referred to as "Contract") , attached hereto as composite Exhibit "A", between Premier Election Solutions, Inc., a Delaware corporation (hereinafter "Original Party") and the County of Volusia. On or about May 19, 2010, the Original Party sold certain intellectual property and other assets of the Original Party to Dominion Voting Systems, Inc. a Delaware corporation (hereinafter "Substitute Party"), as stated in that certain asset acquisition notice letter dated May 19, 2010, which confirms the assignment of the above-referenced contracts and which is attached hereto and incorporated herein as Exhibit "B". The foregoing consent to said assignment by the County is given in consideration of said asset acquisition letter subject to the conditions precedent that such consent by the County: (1) shall in no way affect the liability or obligations of the Original Party under the Contract up to and including the date of said assignment; (2) shall not constitute a consent to any future assignment and assumption of the obligations of the Substitute Party under the Contract to a third party; (3) shall not affect the total contract price stated in the Contract; (4) shall not affect the scope of work, or services performance, and specifications of the Contract; (5) shall not constitute or be construed as a waiver or the extinguishment of any right or claim of the County of Volusia against the Original Party under said Contract; and, (6) shall be predicated on the Original Party's and Substitute Party's compliance with the conditions and representations articulated in the Acceptance of Assignment and Assumption Agreement section of this Agreement.

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Attest:

County of Volusia, Florida

By: _____

James T. Dinneen, County Manager

By: _____

Frank T. Bruno, Jr., Chair

Acceptance of Assignment and Assumption Agreement

The Substitute Party and Original Party hereby acknowledge and agree as follows.

(1) Premier Election Solutions, Inc. hereinafter referred to as “Original Party” confirms said assignment and assumption of contract to Dominion Voting Systems, Inc., hereinafter known as “Substitute Party”, and waives any claims and rights against the County that it now has or may have in the future in connection with the Contract.

(2) The Substitute Party accepts said assignment and assumption and agrees to be bound by and to perform all services in accordance with the terms and conditions contained in the Contract. The Substitute Party also assumes all obligations and liabilities of, and all claims against, the Original Party under the Contract as if the Substitute Party were the original party to the Contract.

(3) The Substitute Party ratifies all previous actions taken by the Original Party with respect to the Contract, with the same force and effect as if the action had been taken by the Substitute Party.

(4) The Substitute Party is the Original Party’s successor in interest in and to the Contract. The Substitute Party, by this Agreement, shall be entitled to all rights, titles, and interests of the Original Party in and to the Contract as if the Substitute Party were the original party to the Contract. As such, the Original Party and Substitute Party agree that following the effective date of this Agreement, the term “Vendor,” as used in the Contract, shall refer to the Substitute Party.

(5) Except as expressly provided in the Consent to Assignment and Assumption of the Contract, nothing in it shall be construed as a waiver of any rights of the County against the Original Party before the date of this Agreement under the Contract or its rights, benefits, and immunities of sovereign immunity in accordance with Section 768.28, F.S.

(6) As such, the Original Party and Substitute Party agree that all payments and reimbursements previously made by the County to Original Party, and all other previous actions taken by the County under the Contract, shall be considered to have discharged those parts of the County's obligations under the Contract. All payments and reimbursements made by the County after the date of this Agreement in the name of or to Original Party shall have the same force and effect as if made to Substitute Party and shall constitute a complete discharge of the County's obligations under the Contract to the extent of the amounts paid or reimbursed.

(7) The Original Party and Substitute Party agree that the County is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases directly or indirectly arising out of or resulting from this Acceptance of Assignment and Assumption Agreement or County's Consent to Assignment and Assumption of Contract other than those that, in the absence of this Agreement and County's consent, County would have been obligated to pay or reimburse under the terms of the Contract.

(8) The Original Party and Substitute Party agree that the County shall commence paying the Substitute Party for all services rendered under the Contract upon full execution of the Consent to Assignment and Assumption of Contract and this Acceptance of Assignment and Assumption Agreement.

(9) The Original Party and Substitute Party warrant that the "transaction whereby Dominion Voting Systems, Inc. purchased certain intellectual property and other assets

(including the Master Agreements referenced in the attached Consent to Assignment and Assumption of Contract) of Premier Election Solutions, Inc. and PES Holdings, Inc., as stated in the asset acquisition notice letter dated May 19, 2010, attached hereto as Exhibit "B", is a true and accurate statement of the occurrence of said assignment which is hereby incorporated herein by reference.

(10) The Substitute Party agrees to secure and maintain the insurance required in the Contract during its entire term.

(11) The Original Party and Substitute Party agree, as applicable, to all the terms and conditions thereof and as stated herein as contemplated by the County's consent articulated above.

Original Party:

Premier Election Solutions, Inc.

By: _____

Title: _____

Date: _____

Substitute Party:

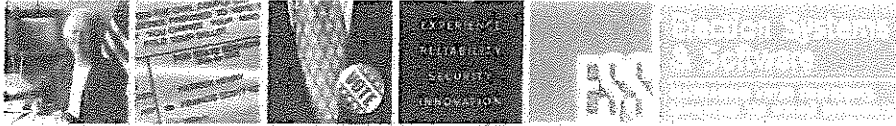
Dominion Voting Systems, Inc.

By: _____

Title: _____

Date: _____

Exhibit "B"



May 19, 2010

VIA EMAIL TO amcfall@co.volusia.fl.us
Volusia County, Florida
Ann McFall
125 W. New York Ave.
DeLand, FL 32720

Dear Ms. McFall:

By now, you are aware of ES&S' recent transaction whereby Dominion Voting Systems, Inc. ("DVS") purchased certain intellectual property and other assets of Premier Election Solutions, Inc. and PES Holdings, Inc. (collectively, "PES"). Furthermore, you should have received a joint letter from DVS and PES describing the ramifications of the transaction on a going forward basis.

Pursuant to the transaction, ownership rights in the Assure 1.2 intellectual property were sold to DVS. Because Assure 1.2 was previously delivered to you and has been installed on your equipment, as part of the DVS transaction, we agreed to assign all our contracts with you to DVS, provided you consent to such assignment. The purpose of this letter is to request that you consent to an assignment to DVS.

Sincerely yours,

Aldo Tesi
President and CEO

The undersigned hereby acknowledges and consents to the assignment of the contracts it currently has with PES to DVS, and hereby releases PES from all future obligations under such contracts.

Dated: MAY 26, 2010.

ANN Mc FALL
By: Ann Mc Fall
Its: SUPERVISOR OF ELECTIONS

