

**DIRECTIVE CONCERNING THE CONDUCT OF ELECTRONIC VOTING SYSTEM  
EXAMINATIONS BY THE COMMONWEALTH OF PENNSYLVANIA ISSUED BY THE  
SECRETARY OF THE COMMONWEALTH**

Pursuant to Section 1105-A of the Pennsylvania Election Code, at 25 P. S. §3031.5, and revised as required by Act 150 of 2002, the following Directive is issued by the Secretary of the Commonwealth for all electronic voting system examinations conducted in the Commonwealth of Pennsylvania.

1. A voting system vendor interested in having an electronic voting system (system) examined in the Commonwealth of Pennsylvania must submit a written request to the Secretary of the Commonwealth. Each request shall be accompanied by a Request for Examination and Test of Voting System (Request for Examination) (enclosed as Attachment A) affirming that the requestor understands that the voting system vendor shall reimburse the Commonwealth for all reasonable costs associated with examination of the system, including fees and expenses charged by the Secretary of the Commonwealth's designated voting system examiner during the preparation and execution of the examination. Each request shall also be accompanied by a non-refundable deposit of \$15,000.00, made payable to the Commonwealth of Pennsylvania. Any stand-alone equipment, which can be sold separately, constitutes a system for the purposes of examination and requires a separate deposit.
2. The Department will review a system(s) **if** the system(s) has been evaluated by a federally recognized independent testing authority (ITA) or, as such authorities are now called, Voting System Test Laboratories (VSTL), and certified by the U.S. Election Assistance Commission (EAC) for conformance with either the 2005 Voluntary Voting System Guidelines or the Voluntary Voting System Guidelines 1.1 published by the EAC, or any subsequent iteration of federal voting system standards. Each request for a system examination shall include a copy of the most recent VSTL testing report(s) qualifying the system(s).
3. A voting system submitted to the Secretary for examination will be tested to verify that the system conforms to federal and state law and any regulations or standards adopted by the Secretary regarding the following:
  - a. Confidentiality;
  - b. Security;
  - c. Accuracy;
  - d. Safety;
  - e. Reliability;
  - f. Usability;
  - g. Accessibility;
  - h. Durability;
  - i. Resiliency; and
  - j. Auditability.
4. Upon application for an examination, the vendor must submit to the Secretary of the Commonwealth and his designated representative(s), *i.e.* examiner or examiners, a detailed Representation Affidavit, including (a) a list of all components (including hardware and software, as well as the software version and number, if any); (b) a copy of the most recent VSTL testing report(s) qualifying the system; (c) a

statement that the system is available in sufficient quantity to meet the needs of voters in the various counties in the Commonwealth; and (d) complete documentation for each system to be examined, including source codes, the technical data package (TDP) including Security specification, operating manuals, training manuals, setup manuals, repair manuals, procedures manuals and programming instructions. (A copy of the Outline of the Content and Format for a Representation Affidavit is enclosed as Attachment B.) The Commonwealth will retain the examination deposit, without conducting an examination, if any false statement is provided in the Representation Affidavit. The Secretary will schedule the examination upon receipt of the examination deposit and accompanying Request for Examination, the Representation Affidavit, and the VSTL approval(s), pursuant to paragraph 2.

5. Upon receipt of the Request for Examination, the examination deposit, and the documentation referred to in paragraphs 2 and 4 above, the Secretary will forward to the vendor a copy of Article XI-A of the Pennsylvania Election Code, 25 P.S. §3031.1 *et seq.* and other relevant information.
6. The Secretary or the Secretary's designee will forward any further instructions to the vendor no later than twenty (20) days prior to the scheduled examination.
7. The Secretary may schedule examinations at his discretion. The vendor shall supply to the Department the Request for Examination, the examination deposit, the Representation Affidavit and all system documentation referenced in paragraphs 2 and 4 above at least thirty (30) days before the examination, unless otherwise authorized by the Secretary.
8. The examination deposit may be returned to the vendor, less the cost of any work completed by the examiner to date, when a vendor cancels the examination more than 20 days prior to the scheduled examination. The examination deposit will not be returned to the vendor when a vendor cancels the examination less than 20 days before the scheduled examination or if any false statement is provided in the Representation Affidavit or documentation, as specified in paragraphs 2 and 4 above.
9. The examination will be conducted in accordance with Article XI-A of the Pennsylvania Election Code. The examination will be videotaped at the sole discretion of the Secretary. Any feature that the vendor wants to have approved for use in the Commonwealth must be presented for examination. The vendor must present the system to the Secretary and his designated representative(s) in a condition that enables them to manipulate and examine the system including election definition and ballot setup, if appropriate. The vendor must also provide to the Secretary and his designated representative(s) the ability to program and set up an election of their own design should it be deemed necessary. Functional testing will be conducted during the examination to verify that the system complies with the criteria established in section 1107-A of the Pennsylvania Election Code, at 25 P.S. § 3031.7, including the "Pennsylvania method" at section 1107-A(3), at 25 P.S. § 3031.7(3). (See the Explanation of the Pennsylvania Method at Attachment C.) Based on prior experience, the Department strongly recommends that each vendor bring a skilled technician who can answer technical questions regarding the system to be examined.
10. The system under review must meet all of the criteria set forth in the Pennsylvania Election Code at the scheduled examination. If the Secretary does not approve the system, and another examination or demonstration of the same system is required, the Secretary of the Commonwealth shall determine the fee.

11. Either at the time of the examination or as soon thereafter as is practicable, the vendor, by its duly authorized officer, shall execute an indemnification and warranty in the form provided by the Secretary. See Attachment D. Thereafter, if the vendor's system has been approved by the Secretary, the vendor or its successor shall re-execute the prescribed indemnification every three (3) years or within ninety (90) days of (a) any change in ownership of the vendor, the vendor's assets, or the structure of the vendor's organization; (b) the filing for bankruptcy protection by the vendor; or (c) an assignment for the benefit of the vendor's creditors.
12. Each designated representative(s) of the Secretary will submit a written report to the Secretary no later than 30 days after the date of the examination, unless otherwise directed by the Secretary. The report shall describe whether the system examined can be safely used by voters at elections as provided in the Pennsylvania Election Code and whether it meets all of the requirements specified in the Election Code.
13. The Secretary will issue an official examination report after all of the reports of the designated representative(s) have been received. The Secretary will forward to the vendor a copy of the official examination report(s) as soon as it is issued.
14. The Secretary's report will specify (a) the capacity of the components of the system; (b) the number of voters who may reasonably be accommodated by the voting devices and automatic tabulating equipment that comprise the system; and (c) the number of clerks and machine inspectors required, if any, based on the number of registered electors in any election district in which the system is to be used.
15. Any change that affects the accuracy, efficiency or capacity of an approved system must be presented to the Secretary, provided such change has been certified or approved by the EAC or any of its successors, as the case may be. At his discretion, the Secretary may request a demonstration or an examination of the system with any changes. In addition, the Secretary may, at any time and at his discretion, reexamine any system previously examined and approved by him. Failure to obtain recertification or approval of the change from the Secretary of the Commonwealth prior to sale or distribution of the changed voting system may result in suspension or decertification of the voting system.
16. Subject to the terms and conditions below, this Directive shall be binding upon any vendor and its respective successors and assigns.
17. The vendor may not assign, in whole or in part, its rights, duties, obligations, or responsibilities with respect to development, service and maintenance of a system approved by the Secretary without written notification to the Secretary. For the purposes of this Directive, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge or other transfer of any ownership interest in the system approved by the Secretary.
18. Any assignment shall be evidenced by a written agreement executed between the vendor and its assignee, in which the assignee agrees to be legally bound by all of the terms and conditions of this Directive, as well as the requirements for systems contained in the Pennsylvania Election Code, and to assume the duties, obligations and responsibilities being assigned.
19. All COSTARS-10 contracts will expire in 2019 and will not be renewed for the following year. Vendors interested in providing voting systems in Pennsylvania going forward must meet the updated requirements in the COSTARS-39 contract, and can access detailed information about how to qualify

for the new contract here: <http://www.emarketplace.state.pa.us/Solicitations.aspx?SID=COSTARS-39>. Until the COSTARS-10 contracts expire, both COSTARS-10 and COSTARS-39 contracts may run concurrently, so that counties under the earlier contracts will maintain coverage, such as maintenance and training, until new voting systems are procured.

20. Failure by a vendor to adhere to any of the terms and conditions contained in this Directive may result in delay or termination of the certification process if the Secretary has not yet approved the system. Failure by a vendor or its assignee to adhere to any of the terms and conditions contained in this Directive may result in the revocation of the certification of the system if the Secretary has already approved the system of the vendor. If the Secretary revokes the certification of the system when a vendor or its assignee fails to adhere to any of the terms and conditions contained in this Directive and the vendor or its assignee has sold the system to a county within the Commonwealth of Pennsylvania or to the Commonwealth of Pennsylvania, then the vendor or its assignee must reapply for certification with the Secretary.
21. In the event that a system previously approved by an VSTL is later found by the VSTL or its successor not to be in compliance with the federal standards and the system has been certified by the Secretary of the Commonwealth, the Secretary of the Commonwealth reserves the right to reexamine the system.

Attachments:

- Attachment A: A copy of the Request for Examination of Voting System, referenced in paragraph 1.
- Attachment B: A copy of the Outline of the Content and Format for a Representation Affidavit, referenced in paragraph 4.
- Attachment C: Explanation of the Pennsylvania Method, referenced in paragraph 9.
- Attachment D: Indemnification and Warranty, referenced in paragraph 11.