

December 20, 2005

Mr. Gary Bartlett  
Executive Director  
State Board of Elections  
6400 Mail Service Center  
Raleigh, NC 27699-6400

VIA E-MAIL

Re: *North Carolina RFP ITS-002724 and Requirements  
Contained in Session Law 2005-323*

In response to your memo dated December 19, 2005 regarding the escrowing of all software for this project I am providing you the following response to the current status of our efforts to move forward with the subject RFP. As you know, DESI publicly stated in our Complaint seeking a Declaratory Judgment that we could not escrow all third-party software. Moreover, we believe that no vendor will be able to comply with the requirements to identify all programmers responsible for creating the third party software to be placed in escrow. Those requirements impose harsh criminal and civil penalties for non-compliance. As such, DESI will be unable to enter into a contract to sell voting equipment in North Carolina without a modification to Session Law 2005-323. DESI's RFP response explicitly stated that its response was not an offer to contract, but rather an offer to negotiate a contract.

DESI is prepared to work closely with the North Carolina State Board of Elections ("SBE") in drafting a modification to Session Law 2005-323 that meets the true intent of the legislature while at the same time imposing reasonable requirements on all vendors that are capable of being met, and which will allow DESI to continue to support its loyal customers in the State of North Carolina.

With respect to the deadlines addressed in your memorandum dated December 9, 2005, and follow-up correspondence regarding the performance bond and escrow requirements, DESI will be unable to comply with the deadlines imposed by the SBE in addition to the requirements of state law. In particular, since no contract has been executed by DESI, and the SBE; DESI is unable to obtain a performance bond from its Surety, since the Surety requires the existence of a formally executed contract. Furthermore, pursuant to Session Law 2005-323, the requirements for a performance bond and the escrow of all software are not triggered until the vendor executes a contract to sell voting equipment in North Carolina. As noted above please be advised that DESI will not execute a contract to sell voting equipment in North Carolina without the modification and subsequent clarification of the requirements contained in Session Law 2005-323. As we have previously made clear, our difficulty is not with our software, but with the software that is not owned or controlled by DESI. This includes operating systems, drivers and myriad other pieces of code that are present in any computer system. Further, we believe it is impossible for any vendor of an election system to say that they have access to all of the source code in question or that it is all in escrow somewhere.

On December 1, 2005, the SBE publicly announced that every vendor certified faced issues with respect to the escrow of third-party software. At that time, the SBE proposed a solution to the

escrow requirements for third-party software. However, after further analysis, we believe the proposed solution is inconsistent with state law. Moreover, the proposed solution fails to address the requirement imposed on vendors to identify all programmers responsible for creating the third party software to be placed in escrow.

Please contact us at your earliest convenience to discuss a legislative or other solution to the impractical requirements imposed upon vendors by the current state law.

Cordially,



Charles R. Owen  
Division Counsel  
Diebold Election Systems, Inc.

cc: Dave Byrd  
Barry Herron  
Robert Pickett