

County of Santa Clara

Office of the County Executive



CE05 042903

Prepared by: Kathy Maniaci
Secretary to the County
Executive

Reviewed by: Jesse Durazo
Registrar of Voters

DATE: April 29, 2003

TO: Board of Supervisors

FROM: 
Peter Kutras Jr.
Interim County Executive

SUBJECT: Approval of Agreement with Sequoia Voting Systems, Inc. and Implementation of Direct Recording Electronic Voting System

RECOMMENDED ACTION

Consider recommendations relating to a Direct Recording Electronic (DRE) Voting system.

Possible action:

- a. Approve Agreement with preferred vendor, Sequoia Voting Systems, Inc., in an amount not to exceed \$18,904,509.38 for period April 29, 2003 through September 30, 2008 for

the purchase of electronic touch–screen voting equipment and services, and an absentee voting system. County Counsel has approved the Agreement as to form and legality.

- b. Approve Escrow Agreement with DSI Technology Escrow Services (Exhibit H of Sequoia's Agreement), listing Sequoia Voting Systems, Inc. as the "Depositor" and the County of Santa Clara as the "Preferred Beneficiary," for period April 29, 2003 through September 30, 2008, to ensure a deliverable DRE voting system. County Counsel has approved this Agreement as to form and legality, as well.
- c. Accept report, responding to referral of February 25, 2003 regarding fiscal implications of Agreement with Sequoia Voting Systems, Inc.
- d. Accept report, responding to Supervisor Pete McHugh's referral of February 25, 2003 which directs the Administration to develop a proposal to conduct a limited pilot during November 2003 and March 2004 elections, requiring voters to generate a voter–verified paper record of vote cast at time of vote, including process to test accuracy of small random sample of touch–screen machines using voter–verified paper records, and to submit proposal to Secretary of State for necessary authorization.
- e. Accept report regarding the Registrar of Voters' DRE Project Timeline and milestone accomplishments.
- f. Accept report, responding to referral of February 25, 2003 which directs the Administration to consider creating a citizen committee, including criteria for selection and role of members, or expanding existing committee, to monitor the election systems and testing of logic and accuracy of each unit.

FISCAL IMPLICATIONS

On February 25th, the Board directed the Administration to "prepare a Request for Appropriation Modification for consideration, recommending a transfer of funds from the Contingency Reserve, relating to recovery of initial one–time fiscal year 2003 costs to implement the DRE voting system conversion."

Since the Board will be approving the Agreement with Sequoia Voting Systems, Inc., with a start date of April 29, 2003 and the first installment payment is not due until September 2003, a Request for Appropriation Modification (F–85) for FY2003 is not required. Instead, the allocation of funds for the FY2004 portion of the contract funding will be part of the FY2004 budget process.

The total cost of the agreement with Sequoia is \$18,904,509.38. The payment schedule will occur over two fiscal years. The County's first payment of \$6,500,000 to Sequoia will take place thirty days after acceptance of the first 2,000 AVC Edge® and 400–C Optical Scan Counter units. The first payment is due on or around September 29, 2003.

The second payment of \$6,175,000 is due 30 days within acceptance of the remaining machines, which would be on or around October 30, 2003; and the third payment of \$6,229,509.38 must be paid by August 31, 2004.

During FY2004 and after the second payment of October 8, 2003, the County will bill the State of California for reimbursement of 75%, which amounts to \$9,503,395.64, of its payments for hardware and software purchases through the State's Voter Modernization Bonds (Proposition 41).

On February 25, 2003, the Board approved a 5-year recovery plan to bill cities and districts. Listed below is an estimate of anticipated funds for recovery, amounting to \$3,218,802.00, beginning with FY2004 through FY 2008. The Registrar of Voters' projection is based on \$0.24 per registered voter.

FY04	\$ 514,992
FY05	\$ 836,913
FY06	\$ 514,992
FY07	\$ 836,913
FY08	\$ 514,992
Total:	\$3,218,802

It is still unclear as to the amount of reimbursement funds the County will receive from the Federal government under the "Help America Vote" Act of 2002. Nationwide, \$650 million is to be allocated for election administration and punch-card replacement. Some of those monies will be used to establish a new Federal Election Assistance Commission. An additional \$4 billion is allocated for various other system improvements. The State must meet all requirements before it is allocated funds that will then be distributed to counties. It should be noted that the estimated Federal funds, listed below as \$1.625 million, are a very low estimate and they may require matching state or local funds. While the "Help America Vote Act of 2002" received approval, there still have been no allocation of funds. Depending on funding and allocation, the County of Santa Clara could receive significantly greater funding from the "Help America Vote Act of 2002."

Below are tables outlining contract costs for the DRE voting system conversion: 1) Total One-Time Contract Costs, 2) FY 2004 Costs – This includes one-time, as well as ongoing costs but does not include the GSA warehouse reconfiguration capital project 3) FY2005 Costs – This includes one-time, as well as ongoing costs – and 4) Ongoing Contract Costs for FY2009–2020.

TOTAL ONE-TIME CONTRACT COSTS

a.	Total Cost of Agreement with Sequoia Voting Systems, Inc.	\$18,904,509.38
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b.	Less State Voting Modernization Bond (Prop. 41) Fund Reimbursement	(\$9,503,395.64)
c.	Less Cost Recovery (over 5 years) from Local Jurisdictions	(\$3,218,802.00)
d.	Less Anticipated Federal Funds through the "Help America Vote Act of 2002"	(\$1,625,000.00)
	NET GENERAL FUND (One-Time) COSTS for the DRE Voting	\$4,557,311.74

TOTAL FY 2004 COSTS

a.	First Two (2) Installment Payments to Sequoia 1) \$6,500,000. and 2) \$6,175,000.	\$ 12,675,000.00
b.	FY2004 Costs (in recommended budget) One-time Costs: \$342,000 --- Ongoing Costs: \$729,689	\$ 1,071,689.00
c.	Less Cost Recovery (Year 1) from Local Jurisdictions	(\$ 514,992.00)
d.	Less State Voting Modernization Bond (Prop. 41) Fund	(\$ 9,503,395.64)
	NET GENERAL FUND COSTS for FY 2004	\$ 3,728,301.36

TOTAL FY 2005 COSTS

a.	Third Payment to Sequoia	\$ 6,229,509.38
b.	Costs in FY2004 recommended budget Ongoing Costs: \$809,743.*	\$ 809,743.00
c.	Less Anticipated Federal Funds from the "Help America Vote Act of 2002"	(\$1,625,000.00)
d.	Less Cost Recovery (Year 2) from Local Jurisdictions	(\$ 836,913.00)
	NET GENERAL FUND COSTS for FY 2005	\$ 4,577,339.38

FY 2009–2020 (averaged) CONTRACT COSTS

a.	Annual Recurring Services (ongoing operational services)/average per year	\$ 635,386.10

b.	ANNUAL NET GENERAL FUND COSTS	\$ 635,386.10
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*This is ongoing cost only, based on FY2004 cost. One-time costs for FY2005 have not yet been determined, but could be as high as \$270,000.

CONTRACT HISTORY

On May 21, 2002, the Finance and Government Operations Committee (FGOC) authorized the County Executive and the Procurement Department to issue a Request for Proposal (RFP) and delegated to the County Executive, or his designee, the authority to execute a contract necessary to fulfill the work place for the November 2003 pilot testing of the DRE voting system, subject to County Counsel approval as to form and legality.

An RFP was subsequently issued and sent to all vendors who were certified by the Federal government and by the Office of the Secretary of State for the California. Five (5) RFP responses were received by the deadline on August 9, 2002.

On August 26, the Evaluation Committee presented the Selection Committee with the recommended vendors for consideration. After extensive review and input from the Technical Team, the Registrar of Voters, Procurement Department, and County Counsel, contracts were executed on September 6, 2002 with the top three (3) vendors: 1) Diebold Elections Systems; 2) Election Systems and Software; and 3) Sequoia Voting Systems, Inc.

On February 25, the Board selected Sequoia Voting Systems as the preferred vendor for the purchase and implementation of a new DRE voting system. Furthermore, the Board approved delegation of authority to the County Executive, or designee, to commence negotiation of an Agreement with Sequoia in an amount not to exceed \$20,000,000 for consideration by the Board. County Counsel has approved the agreement as to form and legality.

REASONS FOR RECOMMENDATION

The County has negotiated an Agreement with Sequoia Voting Systems, Inc. (Sequoia). The Agreement (Attachment "A") is a "turnkey" solution in that the vendor will complete the work of building and installation to the point of readiness for operation by the County of Santa Clara.

The Agreement with Sequoia includes all elements of the project necessary to effectively convert from a punch card system to a Direct Recording Electronic (DRE) voting system (outlined below). The cost of \$18,904,509.38 (which includes all applicable sales and use taxes) provides equipment (hardware), software, and support services for the AVC Edge® DRE Touch Screen and 400-C Optical Scan voting systems through September 2008.

The Agreement, also, avoids substantial ongoing costs to maintain the DRE voting system through year 2020 by ensuring five additional warranty years at no cost and future years at a fixed rate.

An escrow agreement with DSI Technology (Attachment "B"), from period April 29, 2003 through September 30, 2008, will be entered into with the County listed as "Preferred Beneficiary" and Sequoia as "Depositor" to ensure a deliverable DRE voting system. The terms of this third-party Agreement state that Sequoia must provide the County a performance bond from a reputable surety company, satisfactory to the County, for 100% of the Agreement price. Should Sequoia breach their Agreement with the County, the County would be paid under the performance bond. The Agreement with DSI Technology, also, states that Sequoia must provide extended warranty and support for the equipment and software for up to 20 years from the effective date of this Agreement, provided the County continues uninterrupted payment for the extended warranty and support.

KEY POINTS OF THE SEQUOIA VOTING SYSTEMS AGREEMENT

Equipment:

The DRE voting system will be used at all polling precincts and early voting at the Registrar of Voters and at any future remote sites throughout the County.

The optical scan system will be used for absentee voting by mail. Collectively, these two systems include all aspects of the AVC Edge® touch–screen voting system, Sequoia 400–C Optical Scan Ballot Counter System and related software, projects and services. In summary, below is a list of equipment included in the purchase price:

Quantity	Description
5,500	AVC Edge® DRE Touch Screen Units
1,250	Audio Voting Hand Control and Headset Units
1,125	AVC Edge® Transportation Carts
1,250	Card Activator Units
31,250	Activation Cards
30	Manual Cartridge Readers
2	WinEDS Primary and Back-up Services
20	Desktop Workstations
5	Laptops
3	Sequoia 400-C Optical Scan Readers for Absentee Voting
300	Vote Simulation Cartridges
300	Additional Results Cartridges
175	Cartridge Trays
200	Battery Packs
200	AVC Edge® Covers with Wheels and Handles
150-5,500	Voter Verifiable Paper Printers
	Spare Parts

Systems and Software

Both systems will be delivered and installed by Sequoia. Sequoia is responsible for the professional quality, technical accuracy, timely completion and coordination of all services in accordance with Federal, State, and local laws and regulations.

The software for these systems includes licenses for NT Election Database (WinEDS) and licenses for the Sequoia 400-C Ballot Tabulation, Ballot Printing and WinEDS Connectivity.

For the first five year, there is no additional cost for software integration and interface with WinEDS, implementation, maintenance, and technical support. Annual recurring services are included through September 2008. The County has the right to renew support services with Sequoia from October 1, 2008 through September 30, 2014, without any annual percentage increases for an annual fee of \$30,000. Beginning October 1, 2014, the annual fee is subject to a price increase of 5%, per annum.

Systems Features

Both voting systems are capable of providing provisional and write-in voting. Additionally, they have the capability for instant run-off voting, if it is authorized in the State of California. The AVC Edge® prevents a person from over-voting and the review screen helps reduce under-voting.

Software installation and election set-up includes:

- 1) election definition
- 2) ballot layout
- 3) cartridge programming and testing
- 4) ballot tabulating
- 5) remote and central accumulation
- 6) website linkage
- 7) system interface.

Sequoia will provide extensive testing and security for the AVC Edge® and 400-C Optical Scan systems with acceptance testing, maintenance and diagnostic testing, pre-election logic and accuracy testing, post-election logic and accuracy testing, data security, and a Voter-Verified Paper Record (VVPR).

Additionally, Sequoia will assist the County with warehouse logistics and transportation planning, as well as post-election canvass and other related activities.

Sequoia will, also, work with the County to provide a certified voter card to assist blind or sight-impaired voters with the ability to insert the voter card accurately and easily in an AVC Edge® voting system.

Warranty

All equipment and products will be new and not reconditioned. The original warranty period was one (1) year, after County acceptance; however, Sequoia has agreed to extend the warranty through September 2008 at no additional cost.

Moreover, in the contract, under "Guarantee of Support," Sequoia must provide extended warranty and support of the equipment and software for up to 20 years from the effective date of the agreement, provided the County continues uninterrupted payment for the extended warranty and support. This addresses any concerns about future costs for software upgrades and/or software products becoming obsolete.

The warranty covers all equipment and products. Aside from guaranteeing proper operation and products free of defects, Sequoia warrants the systems will conform to all applicable Federal, State, and local statutes, codes, ordinances, resolutions, and other regulations, and will be fit for the purpose of properly conducting all Federal, State, and local government elections.

Project Management

Terms of the contract include an on-site Sequoia Project Manager to ensure successful management and implementation. The Sequoia Project Manager will remain onsite for the November 4, 2003 full-implementation process through December 31, 2003 and will provide 300 hours of in-house County time during calendar year 2004.

Training

Sequoia will provide onsite training for all aspects of both systems (AVC Edge® Direct Recording Electronic (DRE) Touch Screen and 400-C Optical Scan voting systems) through full implementation.

In conjunction with the County, Sequoia will develop a poll-worker training program and provide "train-the-trainer" classes to County staff. For DRE poll worker classes alone, 340 hours of onsite training will be set aside. Of the 340 hours, 200 will be utilized as on-site poll worker training for the November 4, 2003 Election and 140 hours for onsite poll worker training in 2004.

Public Communication (Media, Voter Education and Outreach)

Sequoia will provide the County with 250 hours of support in the area of public communication and education through December 31, 2004. Together, the County and Sequoia will ensure a good communication strategy and support system for the media, voter education and outreach needs throughout the County of Santa Clara.

Deliverables will include:

- the development of key audiences and message delivery strategies,
- a media advisory template to be distributed prior to all community demonstrations,
- drafting/review of project-related press releases, coordination of/assistance with the coordination of media events, crisis communication strategy for County, and
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assistance with identification of key community partners, such as local media, trade associations, major employers, labor unions and civic organizations.

Sequoia will assist the County with the joint development of press kits, which will include talking points, demonstration materials, security, question and answer documentation, community demonstration calendar, background information about Sequoia, an "Interesting Facts & Figures" document (number of polling places, number of poll workers, historical turnout, etc.), and relevant news clips.

Furthermore, Sequoia will provide the County with an interactive, multi-lingual, web-based AVC Edge® demonstration and an electronic "How-to-Vote" demonstration for duplication on CD or DVD, as well as a PowerPoint presentation for community outreach presentations and media relations activities; design of multi-lingual voter training brochures to be used during public demonstrations; step-by-step audio voting instructions produced in Braille; artwork for sample ballot demonstration on how to vote on the AVC Edge®; and assistance with the design and development of materials necessary to comply with the public notice requirements to comply with Section 302(b) of the Help America Vote Act.

VOTER-VERIFIED PAPER RECORD (VVPR) PILOT PROJECT

At the Board's meeting on February 25, Supervisor McHugh directed the Administration to develop a proposal to conduct a limited pilot during November 2003 and March 2004 elections, requiring voters to generate a voter-verified paper record of their vote, cast at the time of vote, including a process to test the accuracy of a small random sample of touch-screen machines (DRE) using VVPR and to submit a proposal to the Secretary of State for necessary authorization. Attached is a copy of a letter (Attachment "C") sent to the Secretary of State, John Mott-Smith, advising the State that the County of Santa Clara plans to utilize Sequoia to conduct a limited pilot test as directed by the Board.

Following State approval, the County, with the assistance of Sequoia, will undertake a VVPR Pilot for the November 4, 2003 and the March 2, 2004 elections. Sequoia will provide the County with 75 VVPR units for precincts for the November 4, 2003 pilot; and they will provide an additional 75 VVPR units for the March 2004 pilot to accommodate 30 precincts.

DRE PROJECT TIME:

On April 22, 2002 (Attachment "D"), the Board approved a draft work plan for the DRE voting system conversion project. It is an aggressive work plan to implement a new system in time for the November 2003 UDEL Election. This plan ensures a timely full-system replacement of the de-certified punch card system, which is currently being used by the County of Santa Clara, for legal compliance by the March 2004 Presidential Primary.

The Registrar of Voters developed a "DRE Project Timeline Report" (Attachment "E"), in line with the County/Sequoia project management schedule. The Board-approved work plan has been incorporated into the Project Timeline with no major impacts to the project target of the November 2003 UDEL election. The ROV is on schedule and moving forward as planned.

DRE OVERSIGHT COMMITTEE

At the Board meeting of February 25, the Board directed the Administration "to consider creating an oversight or citizen observer committee, including criteria for selection and role of members, or expanding an existing committee, to monitor the election systems and testing of logic and accuracy of each unit."

Based upon specific requirements in the Election Code and, as confirmed by a memorandum from County Counsel, dated February 10, 2003, canvassing (e.g. testing and monitoring) must be performed by Registrar of Voters (ROV) staff. Currently, there is an existing and established practice concerning observers with political parties, media, and other organizations such as the League of Women Voters and the County Voting Rights Advisory Committee. Central Party committee members and interested ballot candidates participate during canvassing, as well. Hence, the County has sufficient oversight from various community groups in this particular area.

Moreover, as directed by the Board, the County will "continue to publicize the process whereby citizen observers may observe the vote counting and modify the observer process to include machine testing for logic and accuracy consistent with provisions of the election code." With this concept in mind, the Administration recommends forming a DRE Oversight Committee, with membership consisting of seven (7) citizens from the following organizations/affiliations:

- Democratic County Central Committee

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Republican County Central Committee

- Member of Public-at-Large
- Member of Public-at-Large
- Voting Rights Advisory Committee
- Voter Accessibility Advisory Committee
- League of Women Voters

It is further recommended that each Board member appoint one member for a total of five, and the Registrar of Voters shall appoint the remaining two. Board members should submit their selections to the Registrar of Voters no later than August 29, 2003. The Registrar will accept responsibility for convening the meetings.

The DRE Oversight Committee would serve as an "ad hoc" committee for two years (during the Uniform District Election Law (UDEL) 2003, the Primary Presidential 2004, and Presidential 2004 elections), as part of the implementation process for the new DRE voting system. It is recommended that the DRE Oversight Committee report to the Registrar of Voters and meet monthly for two months prior to an election and two months afterwards.

The purpose of the DRE Oversight Committee would be to check and review the preparation and operation of the pre- and post- logic and accuracy testing of the new DRE voting system.

CONSEQUENCES OF NEGATIVE ACTION

If the Board does not execute the contract with Sequoia, the County's Registrar of Voters will be delayed in implementing a new DRE voting system.

A punch card replacement system must be in place prior to the Presidential Primary in March 2004. The March 2004 election is the deadline set by the Federal Court to replace the de-certified "Poll Star" Voting System. In addition, the Registrar of Voters would lose substantial time in effecting a replacement system for the November 2003 UDEL Election.

STEPS FOLLOWING APPROVAL

Upon approval, the Clerk of the Board shall obtain the Board Chairperson's signature on five (5) Agreements and five (5) DSI Technology Escrow Agreements (Attachment "B"/Exhibit H) between the County of Santa Clara and Sequoia

Voting Systems, Inc. and provide Kathy Maniaci in the Office of the County Executive with five (5) original Agreements and (5) five Escrow Agreements.

The County Executive's Office (CEO) will:

- forward (2) two original executed copies of the Agreement and one (1) original Escrow Agreement to Jenti Vandertuig of the County's Procurement Department; one to be forwarded by the Procurement Department to Sequoia Voting Systems, Inc.
- An original Agreement will, also, be forwarded to Jesse Durazo, Registrar of Voters
- One original to the Controller's Office
- One original to the County Executive

The Registrar of Voters will continue to report monthly through the Finance and Government Operations Committee until the November 2003 election regarding progress of the DRE voting system conversion.

ATTACHMENTS

- (Transmittal submitted on Apr 22, 2003 2:32:15 PM – PDF Version)
- Attachment A: Agreement Between The SCC and Sequoia Voting Systems, Inc. (Agreements and Amendments)
- Attachment B: Escrow Agreement with DSI Technology Escrow Service (Agreements and Amendments)
- Attachment C: Request to Pilot Testing for a Voter Verified Paper Record (Agreements and Amendments)
- Attachment D: Draft Workplan (Miscellaneous)
- Attachment E: Registrar of Voters DRE Project Timeline Report (Miscellaneous)