

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
AND
Township of Powell, Marquette County
Help America Vote Act (HAVA) Grant Agreement¹
AutoMARK Ballot Marking Devices and
AutoMARK Information Management Software (AIMS)
RE: Master Contract
071B6200250--Election Systems and Software, Inc. (E S & S)

This Grant Agreement is the mechanism by which the State of Michigan awards accessible voting systems for use by individual with disabilities to counties and local jurisdictions, pursuant to HAVA.

Definitions:

“Ballot Marking Device” and *“Equipment”* mean the E S & S AutoMARK Ballot Marking Voter Assist Terminal and related components.

“Contractor” and *“E S & S”* mean Election Systems and Software, Inc.

“County” means any county within the State of Michigan.

“Department” means the Michigan Department of State.

“Grantee” means local jurisdiction or county.

“Local Jurisdiction” means any city or township within the State of Michigan.

“Programming Software” means the AutoMARK Information Management Software (AIMS), used to program the ballot marking device, import optical scan ballot data and format data for use on the ballot marking device.

1. Period of Grant

This grant process applies to statewide purchases of accessible voting systems for use by individuals with disabilities (ballot marking devices and related programming software) occurring in 2006.

¹ Detailed information on this Federal program and uses of funding can be found in the Catalog of Federal Domestic Assistance (CFDA): program number 90.401 - Help America Vote Act Requirements Payments (www.cfda.gov; search by program number).

2. Background and Overall Process

This Grant Agreement is to implement the federal Help America Vote Act of 2002 (HAVA, Public Law 107-252, Title III Section 301) and Michigan election law by establishing a Grant Agreement to use HAVA funds to acquire and implement a statewide accessible voting system for use by individuals with disabilities. This grant applies only to the acquisition and implementation of ballot marking devices and related components and software required to program the devices.

The Michigan Department of Management and Budget, on behalf of the Michigan Department of State, has entered into a Master Contract with E S & S establishing statewide prices for ballot marking devices, programming software and other optional equipment and services.

E S & S will be required to enter into a contractual "purchase agreement" with each county and local jurisdiction. Typically, this document is the purchase agreement provided by the Contractor. The terms and conditions of this agreement shall not conflict in any way with the Master Contract. The terms of the Master Contract will supercede any conflicting terms in the purchase agreement.

E S & S will enter into a software license agreement with each county which provides details regarding the acceptable use of programming software by county staff and any jurisdiction in the county. The license agreement shall not conflict in any way with terms contained in the Master Contract. The terms of the Master Contract supercede any conflicting terms in the license agreement.

The Department will determine quantities of equipment provided to each county and jurisdiction based on the criteria listed in Section 3. The itemized list of equipment to be granted to Township of Powell, Marquette County is listed in Section 13. If changes to quantities of equipment are required and approved, instructions for amending the Grant Agreement will be provided and the Grantee will be required to enter into a new Grant Agreement.

The Department will process purchase orders on behalf of all counties and local jurisdictions and will forward this information to E S & S. Once all Grantees in a county have submitted written certification to the Department that equipment and programming software have been delivered, tested and accepted, E S & S will invoice the Department for 85% of the total purchase order. Once election results have been certified for the November 2006 general election, E S & S will invoice the Department for the remaining 15% of the total purchase order. All orders, invoices and payments will be issued on a county-by-county basis. The Department will issue payments directly to the Contractor upon receipt and verification of all necessary certifications from counties and local jurisdictions.

3. Equipment and Programming Software Allocation Criteria

HAVA requires that each polling location have available for use a minimum of one voting system accessible to voters with a wide variety of disabilities. The Department will determine quantities of equipment based on the following criteria:

Ballot Marking Devices:

--Jurisdictions will receive ballot marking devices based on the number of precincts voting in each polling location as follows:

- o 1 or 2 precincts: 1 ballot marking device
- o 3 or 4 precincts: 2 ballot marking devices
- o 5 or 6 precincts: 3 ballot marking devices

NOTE: Counties and local jurisdictions will be responsible for final allocation of equipment to individual polling locations based on this criteria.

--County level: each county will receive 1 ballot marking device.

--“Extra” devices will be allocated to jurisdictions based on the following criteria:

- o Registered Voter Count (RVC) less than 25,000: no additional ballot marking devices
- o RVC between 25,000 – 50,000: 1 additional ballot marking device
- o RVC between 50,000 and 90,000: 2 additional ballot marking devices
- o RVC between 90,000 and 140,000: 3 additional ballot marking devices
- o RVC over 140,000: number of additional ballot marking devices to be determined on a case-by-case basis.

NOTE: Jurisdictions may allocate “extra” devices at their discretion. Extra devices should be used as backup in the case of equipment failure or malfunction.

Programming Software:

--Each county will receive one copy of AIMS programming software.

--Counties have authority to approve use of this software by individual jurisdictions within the county.

4. Grant Process

Each Grantee will complete the Grant Agreement and forward it to the Department at the address indicated in the instructions provided. The Department will review and, once executed, provide the Grantee with a copy of this Grant Agreement. The Department will initiate equipment orders directly with the Contractor, and will provide the Grantee with necessary instructions, forms and other pertinent information related to all aspects of the purchase and contract processes.

The Grantee is responsible for overseeing its purchase agreement with the Contractor and is responsible for ensuring Contractor performance. The Grantee must address any subsequent malfunction or performance issue with any equipment or software included in this grant. The Grantee is responsible for maintaining any and all Contractor performance records. The Grantee has the sole responsibility to verify Contractor compliance with delivery dates, terms and conditions of delivery and testing and all other requirements in accordance with the Master Contract. The Grantee will be responsible for maintenance, repairs or additional costs incurred that are not covered by warranty provisions in the Master Contract.

10. Mandatory Conditions

A. Statutory or Regulatory Requirements

The Master Contract is incorporated and is part of the ensuing contract between the Grantee and the Contractor. The Grantee will comply with applicable federal and state laws, guidelines, rules and regulations in carrying out the terms of this Grant Agreement.

Laws

This is a State of Michigan Grant Agreement and is governed by the laws of the State of Michigan. Any dispute arising as a result of this agreement shall be resolved in the State of Michigan.

Validity

This Grant Agreement is valid upon approval by the State Administrative Board and approval and execution by the Department.

Funding

This Grant Agreement is subject to and contingent upon the availability and appropriation of federal funds and any necessary state appropriation.

Costs

The State will not assume any responsibility or liability for costs incurred in relation to this grant.

Cancellation

The Department may cancel this Grant Agreement upon failure to comply with the terms of this agreement.

Entire Agreement

This Grant Agreement shall represent the entire agreement between the State and Grantee and supercedes any prior oral or written agreements, and all other representations between the parties relating to this subject. The State reserves the right to require counties and local jurisdictions to attend required training sessions with regard to new equipment and programming software purchases made under HAVA.

Adherence to Terms

The failure of a party to insist upon strict adherence to any term of this Grant Agreement shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term of this Grant Agreement.

B. Other

Additional terms and conditions may be negotiated in the purchase agreement between the Grantee and the Contractor as long as they do not conflict with the required terms and conditions of this Grant Agreement and the Master Contract.

5. Testing, Acceptance, Election Certification and Payments

- a. Successful acceptance testing of all equipment and programming software must be completed within 10 calendar days from the date of delivery.
- b. Upon successful completion of all acceptance testing, the Grantee must immediately complete the *Accessible Voting System Receipt/Acceptance Form* and forward the completed form to the Department.
- c. The *Accessible Voting System Receipt/Acceptance Form* will indicate date of delivery, certification of successful testing and authorization to the Department to release payment (85% of the original purchase order) to the Contractor on a county-by-county basis.
- d. Upon certification of election results from the November 2006 general election, the Grantee must immediately complete the *Accessible Voting System Election Certification Form* and forward the completed form to the Department.
- e. The *Accessible Voting System Election Certification Form* will certify successful use of the accessible voting system in the November 2006 general election and will authorize the Department to release the final payment (15% of the original purchase order) to the Contractor on a county-by-county basis.
- f. The Department will initiate payment to the Contractor in accordance with the Master Contract.

6. Ownership of Equipment and Software Purchases: Title

Any equipment and programming software purchased pursuant to this Grant Agreement is the property of the Grantee.

7. Optional Purchases

Per the Master Contract, if the Grantee desires to purchase additional items beyond those authorized in this Grant Agreement, it may do so at its sole expense, outside of this Grant Agreement. No HAVA funds will be available for such purchases. Prices established via the Master Contract will be extended to counties and local jurisdictions by the Contractor for this purpose.

8. Records Maintenance/Retention

The Grantee will maintain a complete set of records and files related to the ordering of equipment, programming software, delivery, testing, performance, maintenance and repairs. The Grantee shall assure all the terms of this Grant Agreement are adhered to and that records and detailed documentation regarding this grant shall be maintained for a period of not less than six (6) years from the date of submission of the *Accessible Voting System Election Certification Form* or until any litigation and audit findings have been resolved.

9. Authorized Access

The Grantee will permit, upon reasonable notification and at reasonable times, access to all records regarding this Grant Agreement by representatives duly authorized by state or federal law.

11. Administration of Agreement

The Grant Manager on behalf of the Department for this Grant Agreement will be:

Timothy Hanson, Director
Program Development Division
Bureau of Elections
PO Box 20126
Lansing, MI 48901-0726
HansonT@Michigan.gov

All questions, comments and correspondence regarding this grant process and the Grant Agreement must be submitted in writing to the Grant Manager.

12. Grantee Contact Information

Note: Grantee to fill in all fields indicated (*) below:

This Grant Agreement is between the Michigan Department of State and:

Township of Powell, Marquette County

*Grant Manager for County, City, or Township (point of contact for the State):

Diane J Burns (printed name)

*Business Address: 39 101 Bensinger

PO Box 177 Big Bay MI 49808

*Business Telephone: 906-345-9345 *Fax Number: 906-345-0168

*e-mail address: OJB Powell TWP@yahoo.com

