

**State of South Dakota
State Board of Elections
Petition for Declaratory Rulings**

Pursuant to the provisions of SDCL [1-26-15](#), I (**Rick Weible**) of (**803 Elk St, Elkton SD 57026**), am (**a resident of Brookings County, SD**), and do hereby petition the South Dakota State Board of Elections for its declaratory ruling in regard to the following:

1. The state statutes or State Board of Elections rules or orders or forms in question is:

-----Start of State Statute-----

[12-17B-2](#). Requirements for automatic tabulating, electronic ballot marking, and election voting equipment systems--Approval of changes or modifications.

Any automatic tabulating or electronic ballot marking system used in an election shall enable the voter to cast a vote for all offices and on all measures on which the voter is entitled to vote. No automatic tabulating, electronic ballot marking, or election voting equipment system may be connected to the internet. No ballot marking device may save or tabulate votes marked on any system. Each system shall fulfill the requirements for election assistance commission standards certification and be approved by the State Board of Elections prior to distribution and use in this state. No system may be approved unless the system fulfills the requirements as established by the State Board of Elections. Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.

Source: [SL 1994, ch 110](#), § 6; [SL 2005, ch 92](#), § 3; [SL 2018, ch 81](#), § 2, eff. Feb. 5, 2018.

----- End of State Statute-----

-----Start of State Board of Elections Rule-----

5:02:09:02. Approval of automatic tabulating systems required before distribution. Prior to distribution in South Dakota, a company or corporation dealing in automatic tabulating or electronic ballot marking systems shall give written notice to the state board of elections and demonstrate that its system complies with SDCL [12-17B-2](#) and § 5:02:09:02.01 or 5:02:09:02.03 and is certified as fulfilling the requirements of the Election Assistance Commission 2015 voting system standards by an independent test authority accredited by the Election Assistance Commission. If the State Board of Elections approves the system, it shall issue a certificate of approval.

Any changes or modifications in an approved automatic tabulating or electronic ballot marking system may be certified by the State Board of Elections with or without the demonstration described in this section for initial approval. The modification for the already approved system must have been certified as fulfilling the requirements of the Election Assistance Commission voting system 2015 standards by an independent test authority accredited by the Election Assistance Commission or been certified to meet the national standard by another state. Any change or modification determined to be de minimis by the independent test authority does not need state board of elections certification.

Source: 2 SDR 5, effective July 30, 1975; 6 SDR 25, effective September 24, 1979; 16 SDR 203, effective May 28, 1990; 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 29 SDR 113, effective January 30, 2003; 32 SDR 109, effective December 26, 2005; 33 SDR 230, effective July 1, 2007; 35 SDR 306, effective July 1, 2009; 46 SDR 42, effective September 30, 2019; 47 SDR 37, effective October 6, 2020.

----- End of State Board of Elections Rule -----

2. The facts and circumstances which give rise to the issue to be answered by the board's declaratory ruling are:

ES&S sold to both Lincoln County, March 18th 2020 (Exhibit A), and Penington County, March 31st 2020 (Exhibit B) Dell Latitude laptops model 5501 configured with the ES&S Electionware Results software, which is not listed in the US Election Assistance Commission Certificate of Conformance for the ES&S EVS 6.1.0.0 or 6.1.1.0 as part of its certified system to run the Electionware Results (EMS Standalone Workstation) software. The change to a different laptop was not approved by the South Dakota State Board of Elections.

- a. The ES&S EVS 6.1.0.0 system configuration was approved on October 30th, 2019 by the State Board of Elections for use in the state of South Dakota.

<https://boardsandcommissions.sd.gov/bcuploads/2019EVS6100Report.pdf>

- b. The ES&S EVS 6.1.0.0 EAC Certificate of Conformance clearly shows that only the Dell Latitude 5580, OptiPlex 5040, 5050, and the 7020 are certified and approved for use in the ES&S voting system.

COTS Hardware

Manufacturer	Hardware	Model/Version
Dell	EMS Server	PowerEdge T430, T630
Dell	EMS Client or Standalone Workstation	Latitude 5580, OptiPlex 5040, 5050, 7020
Dell	Trusted Platform Module (TPM) Chip 1.2 and 2.0 (optional)	M48YR

https://www.eac.gov/sites/default/files/voting_system/files/EVS6100Cert_Scope_%2528FINAL%2529.pdf

- c. The ES&S EVS 6.1.1.0 EAC Certificate of Conformance clearly shows that the Dell Latitude 5580, OptiPlex 5040, 5050, and the 7020 are certified and approved for use in the ES&S voting system.

COTS Hardware

Manufacturer	Hardware	Model/Version
Dell	EMS Server	PowerEdge T430, T630
Dell	EMS Client or Standalone Workstation	Latitude 5580, OptiPlex 5040, 5050, 7020
Dell	Trusted Platform Module (TPM) Chip 1.2 and 2.0 (optional)	M48YR

https://www.eac.gov/sites/default/files/voting_system/files/ES%26S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf

- d. ES&S EVS 6.1.1.0 is the most recent certified system that the State Board of Elections approved of for use in the state of South Dakota in August of 2021.
<https://boardsandcommissions.sd.gov/bcuploads/ES&S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf>
 - e. ES&S has not submitted any Engineering Change Orders for any new laptops or desktops for EVS 6.1.0.0 or 6.1.1.0, as required by the US Election Assistance Commission Voluntary Voting System Guidelines 1.0, for any new hardware to be considered as part of an approved voting system.
 - f. On page 2 of all ES&S administration manuals it is clear ES&S understands the requirements, by placing this notice in the manual:
 - a. **“United States Election Assistance Commission Notification for Approved Voting Systems**
In accordance with the United States Election Assistance Commission (EAC) Testing and Certification Program Manual, Version 2.0, ES&S hereby notifies the purchaser that any changes or modifications to an EAC approved voting system which have not been tested and certified by the EAC will void the EAC certification for such EAC approved voting system.”
 - g. I have asked the U.S. Election Assistance Commission about changes in approved laptops, and they have confirmed that an Engineering Change Order is common for hardware upgrades and is the most frequently used reasons for submissions. (Exhibit C)
 - h. There are no meeting minutes since October of 2019 by the South Dakota State Board of Elections indicating an application by ES&S seeking approval of any changes or modifications to any prior approved voting system seeking to add new models of laptops.
 - i. Lincoln and Pennington Counties and ES&S and failed to abide by our state laws and rules, which clearly requires approval of a change or modification to an already approved configuration by the South Dakota State Board of Elections before a new a new laptop model is used prior to distribution and use in South Dakota.
3. The precise issue to be answered by the board's declaratory ruling is:
- a. Did ES&S comply with the rules which require “a company or corporation dealing in automatic tabulating or electronic ballot marking systems...give written notice to the state board of elections and demonstrate that its system complies with SDCL [12-17B-2](#) and § 5:02:09:02.01 or 5:02:09:02.03 and is certified as fulfilling the requirements of the Election Assistance Commission 2015 voting system standards by an independent test authority accredited by the Election Assistance Commission”, to include a Dell Latitude 5501 laptop?

- b. Did Lincoln County comply with SDCL 12-17B-2 by using the Dell Latitude 5501 laptop in state and federal elections from 2020 to current date, specifically in regard to the following: “Each system shall fulfill the requirements for election assistance commission standards certification and be approved by the State Board of Elections prior to distribution and use in this state. No system may be approved unless the system fulfills the requirements as established by the State Board of Elections. Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.”?
- c. Did Pennington County comply with SDCL 12-17B-2 by using the Dell Latitude 5501 laptop in state and federal elections from 2020 to current date, specifically in regard to the following: “Each system shall fulfill the requirements for election assistance commission standards certification and be approved by the State Board of Elections prior to distribution and use in this state. No system may be approved unless the system fulfills the requirements as established by the State Board of Elections. Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.”?

Dated at (Elkton, SD), this 25th day of August, 2025.



Rick Weible
803 Elk St.
Elkton, SD 57026
Signature of petitioner

SWORN TO BEFORE ME

Notary Public

Commission expires:

Exhibit A



Election Systems & Software, LLC
11208 John Galt Blvd
Omaha, NE 68137

Reordered

EVS 6.1.0.0 Reporting Standard - Standalone EMS

System Purchase Order

March 18, 2020

Lincoln County, South Dakota
104 N Main Ste 110
Canton, SD 57013

Qty Ord.	Description	Price	Ext. Price
	EMS WORKSTATION		
1	DELL LATITUDE E5501 (LAPTOP)	\$1,267.00	\$1,267.00
	<ul style="list-style-type: none"> Dell Latitude 5501 XCTO 9th Generation Intel Core i5-9400H Processor (4 Core, 8MB Cache, 2.5 GHz, 4.3GHz Turbo, 35W vPro) TPM Enabled Intel UHD Graphics 630 with Thunderbolt 3 for Intel 9th GenCore i5-9400H Intel vPro Technology Enabled 8GB, 1x8GB, DDR4 Non-ECC 2.5" 500GB 7200 RPM SATA Hard Drive 15.6" HD Anti-Glare Non-touch, RGB Camera & Mic, WLAN Capable, Privacy Shutter US English Keyboard Backlit with 10 Key Numeric Keypad Dual Pointing No Mouse Intel Dual Band Wireless AC 9560 (802.11ac) 2x2 + Bluetooth 5.0 No Mobile Broadband Card 4 Cell 68Whr ExpressCharge Capable Battery 90W AC Power Adapter - 3-pin 7.4mm Barrel DP Palmrest w/ FIPS Contacted Smart Card Only, TBT OS-Windows Media Not Included US Power Cord No Removable CD/DVD Drive No Carrying Case ENERGY STAR Qualified No Docking Station Intel Core i5 Label for Vpro Dell Limited Hardware Warranty Extended Year(s) Dell Limited Hardware Warranty ProSupport: 7x24 Technical Support, 5 Years ProSupport: Next Business Day Onsite, 1 Year ProSupport: Next Business Day Onsite, 4 Year Extended 		

1		\$61.00	\$61.00
1		\$128.00	\$128.00
1	DELL EXTERNAL USB SLIM DVD+/-RW OPTICAL DRIVE	\$70.00	\$70.00
	MISCELLANEOUS COMPONENTS		
1	OKI B432DN MONO LASER DUPLEX PRINTER - <i>Optional</i>	\$416.00	\$416.00
1	LD 6' USB 2.0 A-B CABLE,T,IVOTR,RTAL 6' USB CABLE	\$4.00	\$4.00
	SERVICES		
1	STANDALONE EMS INSTALLATION	\$1,300.00	\$1,300.00
	<ul style="list-style-type: none"> Staging of EMS workstations at ES&S Technical Services lab. <ul style="list-style-type: none"> Includes the installation, configuration, and testing of EMS workstation. Equipment is shipped to customer location. <ul style="list-style-type: none"> Physical installation of workstation and related hardware (Printer, UPS, etc.) performed by customer. EMS installation summary documentation provided to customer upon completion of off-site installation. 		
	Order Total		\$3,246.00

Termination of Prior Purchase Order

ES&S and Customer are parties to those certain EVS 6.1.0.0 Reporting Standard – Standalone EMS System Purchase Order dated January 14, 2020 and January 22, 2020 (collectively, the "Prior Agreements"). Upon the execution of this EVS 6.1.0.0 Reporting Standard – Standalone EMS System Purchase Order, the parties agree to terminate the Prior Agreements after which such Prior Agreements shall be of no further force and effect."

Payment Terms:

100% of Order Total Due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of corresponding ES&S Invoice.

Note 1: Pricing of purchase order is valid for 30 days due to fluctuating pricing in 3rd party hardware and software. Agreements will need to be updated if not executed within 30 days.

Note 2: In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Note 3: Any applicable (City & State) sales taxes have not been included in pricing and are the responsibility of the customer.

Note 4: Shipping and Handling is not included in the Order Total and will be invoiced separately.

Customer acknowledges that ES&S is purchasing the third-party items set forth herein ("Third Party Items") for resale to Customer, and that the proprietary and intellectual property rights to the Third-Party Items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the payment to ES&S for the Third-Party Items, all its rights and obligations with respect thereto flow from and to the Third Parties. ES&S shall provide Customer with copies of all documentation and warranties for the Third-Party Items which are provided to ES&S.

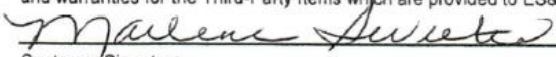

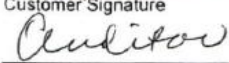


Customer Signature Date

Title

Exhibit B



Election Systems & Software, LLC
 6055 Paysphere Circle
 Chicago, IL 60674
 (877) 377-8683



INVOICE NO.	PAGE
1128754	1
INVOICE DATE	
03/31/20	

BILL TO: PENNINGTON COUNTY, SOUTH DAKOTA
 PENNINGTON COUNTY AUDITOR'S OFFICE
 130 KANSAS CITY ST STE 230
 RAPID CITY SD 57701-2818

SHIP TO: Pennington County, South Dakota
 Pennington County Auditor's Office
 130 Kansas City St - Ste 230

Rapid City, SD 57701-2818

ACCOUNT NO.	CUSTOMER P.O. NUMBER	TERMS	ORDER NO.	SALES REP.	SHIP VIA
	SO#36714 THIRD PARTY	NET 30 DAY	1206135	2861	STANDARD
QTY. ORDERED	DESCRIPTION		UNIT PRICE	UOM DISC. %	EXTENDED PRICE

Coverage Date
 Election Ref: NA
 1.00 Payment Terms are as Follows: 3246.000000 EA 3,246.00
 100% of Order Total Due Thirty (30)
 Calendar Days after the later of (a)
 Equipment Delivery, or (b) Receipt of
 corresponding ES&S Invoice.

 (1) DELL 5501 (LAPTOP)
 (1) Symantec Endpoint Protection
 (1) Windows 10 Enterprise
 (1) Dell External USB Slim DVD+/-RW
 Optical Drive
 (1) OKI B432DN Mono Laser Duplex Printer
 (1) LD 6' USB A-B Cable
 (1) STANDALONE EMS INSTALLATION

RECEIVED

APR 03 2020

PENNINGTON CO., AUDITOR

0 USD .00
 .00
 .00
 FREIGHT DISCOUNT .00
 SHIPPING & HANDLING .00
 TOTAL 3,246.00
 USD

INVOICE NO.	ACCOUNT NO.	AMOUNT
1128754		3,246.00 USD

SD

PLEASE DETACH AND RETURN THIS STUB WITH YOUR PAYMENT. THANK YOU.



Exhibit C



RE: EAC Contact Form Submission

From: Paul Aumayr <paumayr@eac.gov>
Date: Wed 3/27/2024 10:42 AM
To: Rick Weible <rick@rgvisions.com>

Good morning

In response to your questions submitted yesterday:

1. If the laptop is being used as part of an EAC certified voting system, then yes, the county should look to have the vendor submit an engineering change order. Adding new models of laptop to an already certified system with an ECO is very common, and is one of the most frequently used reasons for ECO submissions.
2. The ECO process can be used to update antivirus definition files and other security updates to voting systems. This was the subject of a Notification of Clarification (NOC) issued in 2019, which can be found on our website: <https://www.eac.gov/noc-19-01>

Sincerely,

Paul Aumayr | Sr. Election Technology Specialist
Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov
| PAumayr@EAC.gov

From: U.S. Election Assistance Commission <no-reply@eac.gov>
Sent: Tuesday, March 26, 2024 10:35 AM
Subject: EAC Contact Form Submission

Caution: This email is from an external source. Please take care when clicking links or opening attachments. If the message looks suspicious, please use the Phish Alert Report button for the security team to review.

Submitted on Tuesday, March 26, 2024
Submitted by: Anonymous

Submitted values are:
First Name: Rick
Last Name: Weible
Address:
Elkton, South Dakota. 57026

Message:

I have a few questions regarding Engineering Change Orders:

- 1) If a model of a laptop being used for election results is not the same manufacturer or model listed in the certificate, should the county ask the vendor to submit an engineering change order to be in compliance?
- 2) With the VVSG 1.0 7.4.2 Protection Against Malicious Software, where it specifically states "Voting systems shall deploy protection against the many forms of threats to which they may be exposed such as file and macro viruses, worms, Trojan horses, and logic bombs. Vendors shall develop and document the procedures to be followed to ensure that such protection is maintained in a current status." Should counties/states ask for Engineering Change Orders to be able to update the Antivirus definition files of the system before an election, to ensure the security of their systems? I see that many jurisdictions are using ES&S 6.1.1.0, and the antivirus of the laptop and desktops are stuck at March 29th, 2019....

Phone Number: 6123064555
Email: rick@rgvisions.com
Concerning: Voting System Testing And Certification