

STATE OF FLORIDA
Department of Legal Affairs
OFFICE OF THE ATTORNEY GENERAL
Tallahassee, Florida

ANTITRUST CIVIL INVESTIGATIVE DEMAND

TO: **Election Systems & Software, Inc.**
c/o NRAI Services, Inc.
2731 Executive Park Drive, Suite 4
Weston, FL 33331

No. 06-039

This antitrust civil investigative demand is issued pursuant to the Florida Antitrust Act of 1980, Section 542.28, Florida Statutes, in the course of an official investigation to determine whether there is, has been or may be a violation of **Sections 542.18 or 542.19, Florida Statutes (parts of the Florida Antitrust Act of 1980); or sections 1 or 2 of the Sherman Antitrust Act (15 U.S.C. §§ 1, 2)**, by conduct, activities or proposed action of the following nature:

possible contracts, combinations or conspiracies in restraint of trade or commerce relating to the sale of voting machines and peripheral equipment in the State of Florida.

INTERROGATORIES

You are required by this demand to answer the interrogatories on Attachment A and tender them to the custodian named below on or before **May 5, 2006**. Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to, in which case the reasons for the objection must be stated in lieu of an answer. The answers must be submitted under a sworn certificate, in the form printed on the reverse side of this demand, executed by the person responsible for answering each interrogatory.

PRODUCTION OF DOCUMENTS

You are required by this demand to produce the documents described in Attachment A of this demand. You are required by this demand to produce all documentary material and other tangible evidence indicated above that is in your possession, custody or control, and to make it available for inspection and copying or reproduction by the custodian named below. Such production shall occur on **May 5, 2006** at the following location: **Office of the Attorney General, 107 West Gaines Street, 5th floor, Tallahassee, Florida**. The production of documentary material in response to this demand must be made under sworn certificate, in the form printed on the reverse side of this demand, executed by the person having knowledge of the facts and circumstances relating to such production.

For purposes of this investigation, the following individual is designated as the custodian to whom the documentary material shall be made available:

Russell S. Kent, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, (850) 414-3854.

Your attention is directed to Sections 542.28(14) and 837.02, Florida Statutes, printed on the reverse side of this document.

Issued at Tallahassee, Florida, this ____ day of March, 2006.

CHARLES J. CRIST, Jr.
Attorney General

Countersigned: _____
L. CLAYTON ROBERTS
Deputy Attorney General

By: _____
PATRICIA A. CONNERS
Director, Antitrust Division

CID/Production of Documents

FORM OF CERTIFICATE OF COMPLIANCE

I have read the provisions of Section 542.28(14), Florida Statutes, and do hereby certify that all information required by Civil Investigative Demand No. 06-039 which is in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted to a custodian named therein.

Signature _____

Title _____

Sworn to before me this ___ day of ____, 2006.

Notary Public

542.28 Civil Investigative Demand.

(14)(a) No person, knowing or having reason to believe that a demand pursuant to this section is pending, shall:

- 1. Alter, destroy, conceal, or remove any record, document, or thing with the purpose of impairing its verity or availability in such proceeding or investigation; or
- 2. Make, present, or use any record, document, or thing, knowing it to be false.

(b) Any person who violates any provision of this subsection is guilty of a felony of the third degree, punishable as provided in s.775.082, s.775.083, or s.775.084.

837.02 Perjury in official proceedings.-

(1) [W]hoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

....

(3) Knowledge of the materiality of the statement is not an element of the crime of perjury under subsection (1) . . . and the defendant's mistaken belief that the statement was not material is not a defense.

ANTITRUST CIVIL INVESTIGATIVE DEMAND NO. 06-039 – ATTACHMENT A

DEFINITIONS

1. “And” and “or” as used herein are terms of inclusion and not of exclusion and shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Civil Investigative Demand any Document or information that might otherwise be construed to be outside its scope.
2. “You” and “Your” mean Election Systems & Software, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, managers, employees, agents, and representatives of the foregoing. The terms “subsidiary”, “affiliate”, and “joint venture” refer to any person in which You currently have or during the Relevant Period had partial (25 percent or more) or total ownership or control.
3. “Sequoia” means Sequoia Voting Systems, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, managers, employees, agents, and representatives of the foregoing. The terms “subsidiary”, “affiliate”, and “joint venture” refer to any person in which Sequoia currently has or during the Relevant Period had partial (25 percent or more) or total ownership or control.
4. “Diebold” means Diebold Election Systems, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, managers, employees, agents, and representatives of the foregoing. The terms “subsidiary”, “affiliate”, and “joint venture” refer to any person in which Diebold currently has or during the Relevant Period had partial (25 percent or more) or total ownership or control.
5. “Document” means data or information in any tangible form in Your possession, custody or control, including, but not limited to, the original and any non-identical copy (which is different from the original because of notations on such copies or otherwise) of all correspondence, telegrams, teletype messages, faxes, contracts (including drafts, proposals and any and all exhibits thereto), draft minutes and agendas, memoranda (including inter- and intra-office memoranda, memoranda for file, pencil jottings, diary entries, desk calendar entries, reported recollections, and any other written form of notation of events or intentions), transcripts and recordings of conversations and telephone calls, books, records, photographs, reports, tabulations, charts, books of account, ledgers, invoices, financial statements, purchase orders, receipts, canceled checks, e-mail, Internet mail, computer files, data files, Internet files or pages and all other documentary material of any nature whatsoever, together with any attachments thereto or enclosures therewith, as well as data or communications stored, maintained or organized electronically or magnetically through computer equipment or other information retrieval systems. “Document” further includes electronic correspondence, drafts, metadata, embedded, hidden, and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems, and all duplicates of documents (whether or not identical) in the files of or in the files maintained on behalf of all directors, officers, managers, or other supervisory employees, duplicates of documents in all other files that are not identical duplicates of the originals, and duplicates of documents the originals of which are not in Your possession, custody or control.

Thus, you should produce Documents that exist in electronic form, including data stored in personal computers, portable computers, workstations, minicomputers, personal data assistants, archival voice storage systems, group and collaborative tools, electronic messaging devices, portable or removable storage media, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of online or offline storage, whether on or off Your premises. Electronic mail messages should also be provided, even if only available on backup or archive tapes or disks. For electronic mail messages, provide all responsive e-mails along with e-mail attachments and any related Documents in their native file format (*i.e.*, .pst for Outlook personal folder, .nsf for LotusNotes, etc.). Unless otherwise agreed to by the Division, electronic data shall be printed and produced in both hard copy and electronic form. Electronic data shall be produced in a format that allows the Division to use the data, together with instructions and all other materials

necessary to use or interpret the data. Electronic data must be produced in the data format in which it is typically used and maintained.

Moreover, to the extent that a responsive Document has been electronically scanned (for any purpose), that Document must be produced in a readable and accessible electronic format, and an opportunity provided for the Division to review the original Document. Documents that have been electronically scanned must be in black and white and should be produced in a Group IV TIFF Format (TIF image format), with a Summation format load file. Images should be single page TIFFs, meaning one TIFF file for each page of the Document, not one .tiff for each Document. If Documents are maintained additionally in an OCR (Optical Character Recognition) format, then the OCR text must be produced as well. A load file for these images must be provided in Summation's DII format. If there is no text for a text file, the following should be inserted in that text file: "Page Intentionally Left Blank." Coded data should be received in a CSV format with a caret (^) used for multi-value fields. Moreover, this Civil Investigative Demand requires all objective coding for the production, to the extent it exists.

6. "Communicate" and "Communication" mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise) including, but not limited to, any conversation, discussion, letter, memorandum, meeting, note or other transmittal of information, home office letter or administrative message, whether transmitted directly, indirectly, in writing, orally, electronically or by any other means, and all notes pertaining to any of the aforesaid, and also includes any Document which abstracts, digests, transcribes or records any Communication.
7. "Relevant Period" means for the period from January 1, 2003 to the present.
8. "Division" means the Antitrust Division of the Office of the Attorney General of the State of Florida.
9. "Identify" means to provide the: (a) date of the Communication; (b) type of Communication (telephone conversation, meeting, etc.); (c) place where the Communication took place; (d) identity of the person who made the Communication and the person's employer and job title; (e) identity of each person who received the Communication or was present when it was made along with each person's employer and job title; and, (f) subject matter discussed.
10. "Relating to" means in whole or in part constituting, concerning, discussing, describing, analyzing, identifying or stating.

INSTRUCTIONS

1. All references to year refer to calendar year. Each of the Document Requests and Interrogatories calls for the production of all Documents and information relating to the Relevant Period, regardless of when such document or information came into being or was communicated to You.
2. This Civil Investigative Demand shall be deemed continuing in nature so as to require production of all Documents responsive to any Document Request that were produced or obtained by you up to the date of Your full compliance with this Civil Investigative Demand.
3. The response to this Civil Investigative Demand shall be submitted in the following manner:

Documents provided shall be complete and, unless privileged, unredacted, submitted as found in Your files (*e.g.*, Documents that in their original condition were stapled, clipped or otherwise fastened together or maintained in separate file folders shall be produced in such form). You may submit photocopies (with color photocopies where necessary to interpret the Document), in lieu of the original Documents, provided that such copies are accompanied by an affidavit stating that the copies are true, correct, and complete copies of the original Documents.

Mark each page of the submitted Documents with Your corporate identification and consecutive document control numbers.

Documents submitted shall be produced in the order in which they appear in Your files and shall not be shuffled or otherwise rearranged. Place all Documents produced in file folders. Mark each file folder with corporate identification, the name of the person whose Documents are in the folder and how the original file was labeled. Submit Documents that have been printed, for purposes of Your response to this Civil Investigative Demand, from a common electronic source, such as a central server or an e-mail backup disk, in file folders that are marked with: (a) a description of the enclosed Documents' electronic source (*e.g.*, "Documents from Backup Tape No. 3 for E-mail Server XYZ, 3/1/04 - 3/31/04"); and (b) the name of each natural person whose electronic Documents are contained in that file folder. For data submitted electronically, submit a description of the data's source.

Submit the Documents called for by this Civil Investigative Demand in sturdy boxes not larger than 1.5 cubic feet. Number each box and mark it with: (a) Your corporate identification; (b) the name(s) of the person(s) from whose files any of the enclosed Documents contained therein were obtained; (c) the consecutive document control numbers of each custodian's Documents contained therein; and (d) if not already marked on the file folders contained therein, the information described in Instruction 3.3.

If Documents produced in response to any Document Request are restored from backup tapes or archives and Your computer systems contain deduplication software or services, or You are considering using the deduplication software or services of a third party, You must contact the Division representative identified in Instruction 11 to determine whether and in what manner You can use any deduplication software or services.

Provide any index or box log prepared by any person in connection with Your response to this Civil Investigative Demand. If this index is available in electronic form, provide it in that form to the Division.

4. If search terms were used to conduct all or any part of the search, provide a list of search terms used, along with a glossary of industry and company terminology. In addition, describe the search methodologies and the applications used to execute the search.
5. Before You prepare Documents or information for production in electronic form (for example, before You attempt to copy, for Your response to this Civil Investigative Demand, Documents or information from an electronically stored source onto a disk or other electronic storage medium) You must contact the Division representative identified in Instruction 11 to arrange a meeting or conference call with Your personnel who are familiar with the electronic files in which the Documents or information are stored, to explain to the Division the manner in which the Documents or information are stored, and the types of information that are available on the electronic source. The Division representative must approve the format and production method for electronic data in advance of the submission of Your response.
6. If any Documents or information are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log that includes each document's control number(s), author(s), addressee(s), all recipients of the original and any copies, date, a description of the subject matter of each document, and the Document Request(s) or Interrogatory(ies) of this Civil Investigative Demand to which the document is responsive. In addition:

Each page of each document withheld must be marked with corporate identification and consecutive document numbers;

Attachments to a document should be identified as such and entered separately on the log;

For each author, addressee, and recipient, state the person's full name, title, and employer or firm (You may supply this information on a legend separate from the privilege log);

All attorneys acting in a legal capacity with respect to the communication shall be identified on the log with an asterisk;

The description of the subject matter shall include the number of pages of each document and shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable the Division to assess the applicability of the privilege claimed;

For each document withheld under a claim that it constitutes or contains attorney work product, also state whether You assert that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based;

Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made; and

The privilege log shall be produced in both hard-copy and electronic form.

7. If You are unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by You to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for You to make an estimate, provide an explanation.
8. If Documents responsive to a particular Document Request no longer exist but You have reason to believe the Documents did exist during the Relevant Period, state the circumstances under which they were lost or destroyed, describe the Documents to the fullest extent possible, state the Document Request (s) to which they are responsive, and identify persons having knowledge of the content of such Documents.
9. No agreement or stipulation by the Division or any of its representatives purporting to modify, limit or otherwise vary this Civil Investigative Demand shall be valid or binding unless confirmed or acknowledged in writing, or made of record in open court, by a duly authorized representative thereof.
10. In order for Your response to this Civil Investigative Demand to be complete, the certification form on the reverse side of the Civil Investigative Demand must be executed by the official supervising compliance with this Civil Investigative Demand, notarized, and submitted along with the responsive materials.
11. Any questions You have relating to this Civil Investigative Demand should be directed to Assistant Attorney General Russell S. Kent at (850) 414-3854.

INTERROGATORIES

1. During the Relevant Period, did You Communicate in any manner, directly or indirectly, with Sequoia Relating to any consummated, ongoing, drafted, proposed or contemplated purchase of voting machines or peripheral equipment by Leon County? If so, please Identify each such Communication.
2. During the Relevant Period, did You Communicate in any manner, directly or indirectly, with Diebold Relating to any consummated, ongoing, drafted, proposed or contemplated

- purchase of voting machines or peripheral equipment by Leon County? If so, please Identify each such Communication.
3. During the Relevant Period, did You Communicate in any manner, directly or indirectly, with Sequoia Relating to any consummated, ongoing, drafted, proposed or contemplated purchase of voting machines or peripheral equipment by any other Florida governmental entity? If so, please Identify each such Communication.
 4. During the Relevant Period, did You Communicate in any manner, directly or indirectly, with Diebold Relating to any consummated, ongoing, drafted, proposed or contemplated purchase of voting machines or peripheral equipment by any other Florida governmental entity? If so, please Identify each such Communication.
 5. During the Relevant Period, did You Communicate in any manner, directly or indirectly, with Sequoia Relating to the consummated, proposed or contemplated entry of any person or entity in the voting machines market in the State of Florida? If so, please Identify each such Communication.
 6. During the Relevant Period, did You Communicate in any manner, directly or indirectly, with Diebold Relating to the consummated, proposed or contemplated entry of any person or entity in the voting machines market in the State of Florida? If so, please Identify each such Communication.
 7. Please describe Your past, present, and future plans for marketing voting machines or peripheral equipment in the State of Florida.
 8. Please describe Your decision-making process on whether to market voting machines or peripheral equipment in a particular geographic area within the State of Florida, including the criteria You use.
 9. Please describe Your decision-making process on whether to market voting machines or peripheral equipment to a particular governmental entity within the State of Florida, including the criteria You use.
 10. Please state why You decided not to conduct business with Leon County.
 11. Please list each person, including their name, employer, address, and telephone number, who provided any information Relating to the investigation, drafting or preparation of Your responses to this Civil Investigative Demand.
 12. Please name the trade associations You have participated in during the Relevant Period.
 13. Please list each Florida county to whom You have not marketed Your voting machines or peripheral equipment during the Relevant Period and state your reasons for such decision.
 14. Please list Your volume of sales of voting machines in the State of Florida, by county and by year during the Relevant Period, including both the number of machines sold (by model number) and the dollar value of sales (by model number).
 15. Please list Your market share of sales of voting machines in the State of Florida by year during the Relevant Period, in numerical and monetary terms.
 16. Please describe Your current ability to supply voting machines or peripheral equipment to Florida governmental entities.
 17. Please Identify each Communication You had with any Florida governmental entity during the Relevant Period Relating to a possible purchase of voting machines or peripheral equipment.
 18. For each such Communication, please indicate whether You supplied voting machines or peripheral equipment to the governmental entity, and, if so, the date and terms of that

purchase. If the answer is in the negative for a Communication, please describe why the governmental entity did not purchase voting machines or peripheral equipment from You and provide the terms You offered to the entity, if any.

19. Please list all requests for proposal, requests for information or similar documents Relating to the possible purchase of voting machines or peripheral equipment by any Florida governmental entity that You received or obtained during the Relevant Period, along with Your response thereto, and the won/lost price. If there are any such requests for proposal, requests for information or similar documents that You did not respond to, please indicate the basis for Your decision.
20. To the extent not answered by Your prior Interrogatory Responses, please Identify each Florida governmental entity to whom You have offered to sell voting machines or peripheral equipment during the Relevant Period, including the terms You offered to the governmental entity and the date and terms of any purchase by the entity.

DOCUMENT REQUESTS

1. All Documents Relating to Your responses to Interrogatory Nos. 1 - 20 or otherwise used in responding to this Civil Investigative Demand.
2. Your retention policies Relating to Documents.
3. Documents, including without limitation organizational charts or corporate directories, sufficient to show Your corporate and organizational structure and the lines of reporting during the Relevant Period.
4. All agreements, including without limitation drafts and unexecuted contracts, with Leon County for the provision of voting machines or peripheral equipment during the Relevant Period.
5. All agreements, including without limitation drafts and unexecuted contracts, with any other Florida governmental entity for the provision of voting machines or peripheral equipment during the Relevant Period.
6. All Documents Relating to Your Communications with Sequoia during the Relevant Period.
7. All Documents Relating to Your Communications with Diebold during the Relevant Period.
8. All Documents you received from any trade association or any member or officer of any trade association during the Relevant Period.
9. All Documents You provided to any trade association or any member or officer of any trade association during the Relevant Period.
10. All Documents Relating to Your Communications with Leon County after June 1, 2005.
11. All Documents Relating to Your decision to offer or not offer voting machines or peripheral equipment for purchase by any Florida governmental entity and the terms of any such purchase during the Relevant Period.
12. All Documents Relating to the negotiation, drafting, and execution of any agreement between You and any Florida governmental entity for the purchase of voting machines or peripheral equipment during the Relevant Period.