



U. S. ELECTION ASSISTANCE COMMISSION
VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM
1225 New York Avenue, NW, Suite 1100
Washington, DC. 20005

October 31, 2008

Mr. Mark Phillips
Vice President of Compliance Services
SysTest Labs, Incorporated
216 16th Street, Suite 700
Denver, CO 80202-5115

RE: Suspension of Accreditation

Pursuant to Sections 5.4 and 5.5 of the U.S. Election Assistance Commission's (EAC) Voting System Test Laboratory Program Manual (Program Manual), you are hereby notified that the EAC is suspending the accreditation of SysTest Labs, Incorporated (SysTest) for failing to comply with program requirements.

On October 29, 2008, the EAC issued SysTest a Notice of Intent to Suspend (attached). This notice was sent in response to the suspension of SysTest's National Institute of Standards and Technology (NIST) National Voluntary Laboratory Accreditation Program (NVLAP) accreditation on October 28, 2008. As noted in the Notice of Intent to Suspend, SysTest's suspension by NVLAP violates Section 2.4 of the EAC Program Manual, which requires that "all VSTLs must hold a valid accreditation from NIST [NVLAP]." The section clearly notes that "[t]he loss *or suspension* of a NVLAP accreditation will result in the suspension and possible revocation of any EAC accreditation." The Notice of Intent to Suspend provided SysTest an opportunity (pursuant to Section 5.4.2 of the Program Manual) to submit a response challenging the factual findings of the EAC. SysTest provided their response earlier today.

I have considered the response SysTest submitted to EAC's Notice of Intent to Suspend. In this submission, SysTest "recognize[d] the fact that NIST NVLAP has suspended SysTest Lab's accreditation..." but wished to "challenge the appropriateness" of NVLAP's findings. As noted in the Notice of Intent to Suspend, the facts giving rise to SysTest's noncompliance and suspension under EAC accreditation program are focused solely on whether the laboratory has had its NVLAP accreditation suspended, a fact SysTest does not dispute. If SysTest wishes to challenge the NIST NVLAP suspension, it must direct its concerns to that organization. Consistent with section 5.4.4. of the Program Manual, I have determined that SysTest's NVLAP accreditation is suspended and that this suspension violates Section 2.4 of the Program Manual. Accordingly, as of

the date of this letter, SysTest's EAC accreditation as a Voting System Test Laboratory is suspended.

Pursuant to Section 5.5.1 of the Program Manual, this suspension requires SysTest to immediately cease all testing of voting systems under the EAC's Certification Program. Any testing performed by SysTest during its suspension will not be accepted by the EAC under its Voting System Certification Program. Testing under the EAC Certification Program shall not resume unless the suspension is lifted or SysTest is otherwise authorized by the EAC (in writing) to recommence testing. This period of suspension must be clearly documented in any future test reports submitted by SysTest (see Chapter 4 of the EAC *Voting System Testing and Certification Manual*).

Pursuant to Section 5.5 of the Program Manual, SysTest has 20 days from the date of receipt of this letter to request either an opportunity to cure its noncompliance or an opportunity to be heard on this matter. If no action is taken by SysTest within the next 20 days, the EAC Commissioners shall make a decision on the revocation of the laboratory's accreditation.

Opportunity to Cure. Section 5.5.2 of the Program Manual provides SysTest the ability to request an opportunity to cure its noncompliance within 20 days of its receipt of this suspension decision. **The requested cure must include a detailed remedial plan.** If this plan is accepted, properly executed and verified, SysTest's suspension will be lifted and it may resume testing. Any remedial plan submitted by SysTest shall:

- Identify each noncompliance which served as the basis of its suspension;
- For each identified noncompliance, outline the steps to be taken to achieve compliance. This includes identifying the resources and personnel needed for each step;
- Provide a timeframe for the completion of each identified step and state the final date by which the VSTL will complete the compliance plan;
- Provide a schedule of periodic progress reports to the Program Director; and
- Require the VSTL to provide the EAC a written certification attesting to its completion of the remedial plan and full compliance with program requirements at close of the process.

Any cure proposed by SysTest must ultimately lead to the lifting of SysTest's suspension by NVLAP. Moreover, pursuant to Section 5.5.2.2 of the Program Manual, the remedial plan is subject to approval by the Program Director. The Program Director will work with SysTest to finalize and approve a Remedial Plan that appropriately brings the laboratory into compliance within an acceptable timeframe. Ultimately, SysTest's failure to cooperate, obtain written EAC approval or abide by a remedial plan will result in the termination of the cure process. A determination to terminate the cure process will be made in writing by the Program Director. For more information regarding the process to cure noncompliance, please review Section 5.5.2. of the Program Manual.

Opportunity to Be Heard on Revocation of Accreditation. Section 5.5.3. of the Program Manual provides SysTest the right to request an opportunity to timely challenge the revocation of its accreditation prior to an EAC Decision on Revocation. Systest has 20 days from the date it received its Decision on Suspension to submit a challenge. It may also submit a challenge within 10 days of a written notice terminating the cure process (see Section 5.5.2.2. of the Program Manual). Late submissions will not be considered. All challenges of revocation will be heard by the EAC Commissioners. A challenge of revocation shall be submitted to the Program Director, and addressed to the Chair of the U.S. Election Assistance Commission. Each challenge of revocation shall be in writing and:

- Shall identify each noncompliance which served as the basis of its suspension;
- Shall identify, document and provide verification of any remedial action completed;
- Shall provide, for each identified noncompliance, a written argument challenging the finding of noncompliance; and
- May provide any documentation and information in support of the written statement.

If you have any questions concerning this notice, please contact the undersigned.

Sincerely,



Director, Testing and Certification Program

Attachment: EAC Notice of Intent to Suspend



October 31, 2008

Brian Hancock
Director of Voting System Testing and Certification
U.S. Election Assistance Commission
1225 New York Avenue, NW, Ste. 1100
Washington, DC 20005

cc: Jon M. Crickenberger
NIST/NVLAP Program Manager
National Institute of Standards and Technology
100 Bureau Drive, Stop 2140
Gaithersburg, MD 20899

Re: October 29, 2008 Notice of Intent to Suspend

Dear Mr. Hancock:

This letter is in response to the above-cited Notice of Intent to Suspend SysTest Labs pursuant to section 5.4 of the Program Manual. While we recognize the fact that NIST NVLAP has suspended SysTest Labs' accreditation status, we challenge the appropriateness of this finding based on the following:

1. *Manufacturer Communications*: One area of concern raised by NVLAP centered on alleged "Improper assurances made to manufacturers regarding testing outcomes." The EAC has, in fact, already examined this allegation and in an undated letter to SysTest Labs stated "After fully reviewing all of the correspondence regarding this matter, the EAC has concluded that SysTest was compliant with the EAC program requirements and it will not be issuing a compliance management report..." Since extensive review of this has been conducted and our staff have been trained and sensitized on this very important matter, we question why our accreditation status has in any way been jeopardized by this allegation.
2. *Qualification of Personnel*: NVLAP questioned the qualifications of some of SysTest Labs' staff. While we understand during the stressful conditions imposed by close observation, which included questioning and interviewing by up to eight NVLAP representatives, some of our staff may have not provided complete responses. We would like to point out that all staff conducting voting system testing are degreed and experienced testing professionals who have passed our audited and approved internal training and testing curriculum. We know that experience in voting systems can always improve, but given that we have followed our disclosed procedures in this area we disagree that this constitutes a reason to suspend accreditation.
3. *Validation of Test Methods*: In addition to an extensive review of our quality system during the monitoring visit, NVLAP representatives required that they be allowed to observe actual testing of a voting system. However, the only testing available at the time of the monitoring visit were initial test runs, tests being executed for the very

first time. Due to the fact that these were initial runs, faults were uncovered. We agree with NVLAP's recommendations associated with the need for clarity on test case validity and the difference between initial tests, validation runs and actual run for the record testing. Our agreement is substantiated by the package we submitted to NVLAP on Monday October 27 (and copied to EAC) that shows the procedural changes we plan to make in this area as well as document control at the project level. SysTest Labs believes that this is constructive input that will result in more efficient testing. We also believe that procedural remedies are available to correct any weakness uncovered and we have demonstrated our understanding of exactly how we will implement these recommendations. Discussions about test methods and validation that were held during the monitoring visit made it clear that interpretations of requirements varied even among the NVLAP team members. NVLAP reviewers stated that there were multiple interpretations of test methods within their own team and that further review of 150/150-22 HB would be needed for them to internally reconcile this matter. We would also respectfully point out that when we inquired whether other VSTLs had more effective or clearer test method documentation and validation processes, NVLAP representatives stated that the other labs also had issues and difficulties in this area. Based on our constructive response and ability to rapidly remedy this area, suspension of our accreditation is not warranted and, in fact, will only hinder our ability to effect these changes.

4. *Readiness Testing:* As above, we agree with the recommendations in this area as shown in our October 27 response. We would again respectfully point out that during discussions with the lead NVLAP auditor, there was consensus that requirements regarding readiness testing are unclear and that an RFI would be necessary to clarify this for the benefit of the entire program. Holding our accreditation in suspense for an area where requirements are acknowledged to be unclear is not appropriate. This finding also has implications for all other VSTLs; will they and all relevant testing be held in suspense until program-wide agreement is reached?

We will be communicating with NVLAP on our progress in implementation of the process changes that we have already outlined on the above items. In the interim, we ask the EAC to reconsider its position based on the fact that i) all remedies are procedural in nature and ii) our demonstrated ability to effect these changes. Areas of clarification still exist for the entire program in test validation and readiness testing, and SysTest Labs' accreditation status should not be held hostage to this ambiguous standard until such time as it is clearly defined for all VSTLs.

Yours Sincerely,



Mark Phillips
Vice President, Compliance Services



U. S. ELECTION ASSISTANCE COMMISSION
VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM
1225 New York Avenue, NW, Suite 1100
Washington, DC. 20005

October 29, 2008

Mr. Mark Phillips
Vice President of Compliance Services
SysTest Labs, Incorporated
216 16th Street, Suite 700
Denver, CO 80202-5115

RE: Notice of Intent to Suspend

Pursuant to Section 5.4 of the U.S. Election Assistance Commission's (EAC) Voting System Test Laboratory Program Manual (Program Manual), you are hereby notified that the EAC intends to suspend SysTest for failing to comply with program requirements.

Yesterday, the National Institute of Standards and Technology (NIST) informed EAC that its National Voluntary Laboratory Accreditation Program (NVLAP) has suspended SysTest's accreditation. A copy of this notice is attached. SysTest's suspension violates Section 2.4 of the Program Manual, which requires "all VSTLs must hold a valid accreditation from NIST [NVLAP]." The section clearly notes that "[t]he loss *or suspension* of a NVLAP accreditation will result in the suspension and possible revocation of any EAC accreditation."

Pursuant to Section 5.4 of the Program Manual, SysTest has the right to respond to this notice. Your response will be considered by EAC before it issues a Decision on Suspension. Any response:

- Must be in writing;
- Must be received by the EAC within three days of receipt of this notice;
- Must challenge the factual findings that serve as the basis of the suspension (in this case the fact that NIST NVLAP has suspended SysTest);
- May include relevant documentation in support of its challenge.

If you have any questions concerning this notice, please contact the undersigned.

Sincerely,

Director, Testing and Certification Program

Attachment: NIST NVLAP Letter of Suspension



UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
Gaithersburg, Maryland 20899

October 28, 2008

Mark Phillips
Vice President of Compliance Services
SysTest Labs, Incorporated
216 16th Street, Suite 700
Denver, CO 80202-5115

NVLAP Lab Code 200733-0

Dear Mr. Phillips,

On behalf of the National Voluntary Laboratory Accreditation Program (NVLAP), I write to notify you of NVLAP's decision to suspend its accreditation of SysTest's electronic voting testing program pursuant to NIST Handbook 150, *NVLAP Procedures and General Requirements*, 2006 Edition, section 3.10. This letter provides an explanation of NVLAP's decision and describes the steps SysTest can take to reinstate its accreditation.

This action pertains to voting systems under review by SysTest to be recommended for certification by the Election Assistance Commission for future elections and is not pertinent to systems already deployed for the 2008 election which were certified under alternate systems.

Background Discussion

SysTest Labs, Incorporated is currently accredited by the National Voluntary Laboratory Accreditation Program (NVLAP), a program within the National Institute of Standards and Technology (NIST), to perform testing to federal standards in accordance with the Help America Vote Act of 2002 (HAVA). These standards are the 2002 Voting System Standards (VSS-2002) and the 2005 Voluntary Voting System Guidelines (VVSG-2005). On August 8, 2008, NVLAP sent SysTest Labs a letter outlining specific concerns with respect to SysTest's NVLAP-accredited testing of voting systems, including voting system test campaigns submitted to the Election Assistance Commission (EAC) under their voting system certification process. These specific concerns are documented in the March 2008 NVLAP on-site assessment checklist, produced as part of the normal reassessment process, and in communications between the EAC and NIST regarding issues that EAC staff identified with test reports submitted by SysTest Labs (enclosed). The August 8th letter (also enclosed) outlined three specific concerns. In short they were:

- 1) SysTest's lack of properly documented and validated test methods.
- 2) Testing conducted by unqualified or untrained personnel.
- 3) Improper assurances made to manufacturers regarding testing outcomes.



NVLAP directed SysTest to submit information to NVLAP, including a schedule of all accredited voting systems testing planned, within 14 days of receipt of the August 8th letter. NVLAP informed SysTest of its intention to conduct on-site monitoring of the testing of electronic voting machines. SysTest was notified by email on October 6, 2008 of NVLAP's intention to visit their lab on October 14th through 16th to observe testing that had been scheduled during that period.

NVLAP assembled a team consisting of the NVLAP voting system technical assessor, the NIST/NVLAP program manager for voting system testing and four members of the NIST Information Technology Laboratory (ITL) involved in writing the federal voting system standards. In addition, two EAC staff members were invited to provide their observations. During the on-site visit this eight-member team witnessed several tests, interviewed testers, and examined documents related to the areas of concern.

Site Visit Observations

As a result of this on-site monitoring visit, NVLAP has serious concerns about SysTest's performance of voting system testing. These concerns were supported by observations of testing where the test methods being used were not fully developed, validated, mapped to the requirements of the applicable standards, and controlled under SysTest's document control policy.

From the team's observations it was unclear who at SysTest had the ultimate responsibility for test method development. During the observed tests, it appeared that the testers were running the tests for the first time. Changes were made to the test procedures to address items that should have been caught during an initial run-through of the test. Basic tests, such as the system readiness test, were not conducted successfully. Three test methods failed due to problems with the procedure, tester error, or unfamiliarity with the test set-up. Some anomalies or potential problems during testing were not reported by the testers but were pointed out by members of the on-site team.

During the team's visit SysTest personnel stated that their policy was to validate test methods during the actual testing of voting equipment. This approach is unacceptable. The lab must validate all test methods separate from actual testing so that equipment nonconformance can be isolated from test method problems. This validation must follow set documented procedures and show a clear chain of responsibility for the process.

SysTest has undergone numerous changes in personnel since its original accreditation and, in fact, since the March 2008 NVLAP on-site assessment. SysTest staff conducting testing during the monitoring visit demonstrated a lack of familiarity with the test equipment and procedures. Some personnel who participated in past on-site assessments were no longer associated with the NVLAP-accredited testing; they had been reassigned to work in support of state certification of voting systems. SysTest management's stated goal was to transfer the expertise and testing approach from their New York testing

campaign to the NVLAP/EAC accredited testing campaign. SysTest must improve the level of training of personnel involved in NVLAP/EAC accredited testing given that SysTest has reassigned experienced testers to other work. SysTest should consider bringing in outside instructors to train laboratory personnel.

SysTest was advised that an appearance of impropriety had occurred in a case where personnel had given a client an indication that their equipment would successfully pass testing. SysTest's response was that this was an isolated incident and the person involved had not intended to give this impression. SysTest further stated that their employees were given a quiz which they felt covered training in this situation. It is NVLAP's position that this quiz is insufficient and SysTest must provide specific training to their employees on professional ethics and document the employees' intent to adhere to SysTest's stated policy.

NVLAP's Decision

Pursuant to NIST Handbook 150, *NVLAP Procedures and General Requirements*, 2006 Edition, section 3.10, NVLAP hereby suspends SysTest's accreditation effective as of the date of this letter. SysTest Labs, Incorporated is prohibited from using the NVLAP symbol on its test reports, correspondences, and advertising during the suspension period for all voting system testing. Accreditation may be reinstated only after such time that SysTest can demonstrate voting system testing in accordance with the requirements of the applicable voting system standards and NIST Handbook 150. This demonstration must be achieved through an on-site visit to SysTest to witness testing, review documentation, interview personnel, and any other means necessary to gather objective evidence in support of a decision regarding reinstatement.

This on-site visit will occur only after NVLAP is convinced, through the submission of documentation, that SysTest has taken the necessary steps to correct the areas of nonconformance herein addressed. This documentation will include, but is not limited to: procedures for test method development; procedures for test method validation; revised document control procedures that specifically address technical procedures; fully developed test methods showing validation, document control, and mapping to the federal voting system standards; and, procedures or policies that address methods by which SysTest will control statements or assurances to their clients regarding the outcome of voting system testing.

SysTest was accredited by NVLAP based on its ability to develop and perform competent testing within the framework of an effective management system. SysTest now needs to revise its management system to correct the nonconformances found during this visit and implement these system changes. NVLAP believes that the current SysTest management team is committed to accomplishing this goal and will work with them to that end.

Sincerely,

Sully Bruce for

Jon Crickenberger
NIST/NVLAP Program Manager

Enclosures

Cc: Brian Hancock, Election Assistance Commission