



CITY COMMISSIONERS OFFICE

Lisa M. Deeley, Chairwoman
Anthony Clark, Commissioner
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Hon. Rebecca Rhynhart
Philadelphia City Controller
1230 Municipal Services Building
1401 John F. Kennedy Boulevard
Philadelphia, PA 19102

February 19, 2019

Dear Controller Rhynhart:

Thank you for your letter dated February 8, 2019 regarding the process of our upcoming transition to a new voting system. This transition has been a long-term goal of the City Commissioners, dating back to before I took office in 2016; it did not begin a month ago. The previous City Commissioners worked to draft a Request for Information and to get a bond question placed on the ballot, from which \$22 Million was placed in the Capital budget for this purpose. We returned to this effort with renewed urgency in late 2017, before any action had been taken by the Department of State or the Governor. Our goal was, and still is, to purchase new voting equipment that is secure and easy to use for Philadelphia voters, and that includes a voter-verifiable auditable paper ballot and new electronic poll books.

Originally, our plan was to have electronic poll books in place for the Primary of 2021 and a new voting system in place for the General of 2021. This all changed in April of 2018 when, the Department of State, in conjunction with Governor Wolf, informed all 67 of Pennsylvania's counties that they must have a voter-verifiable paper record voting system selected no later than December 31, 2019, and preferably in place for use in the November 2019 General Election. The Department of State and the Governor's staff subsequently communicated that the state would decertify Philadelphia's current voting machines which are classified as "direct recording electronic" voting machines (DRE) and do not include a paper trail of any kind, in advance of the 2020 election. This was further reiterated in this morning's Philly.com article where Department of State spokeswoman, Wanda Murren, said that decertification of current systems is planned to occur before the 2020 Primary Election, likely happening in early 2020¹.

If Philadelphia's current voting system were to be decertified prior to the acquisition of a new system, there would not be enough time for us to procure and implement a certified system for use in the Presidential Election. Our staff estimates that to be ready for the November 2019 General Election, a selection of a new system needs to be made by February 2019. Moving the

¹ Lai, J. (2019, February 19). Philly's new voting machines: A Q&A guide to the process, the controversy, and why it matters. Retrieved from <https://www.philly.com/politics/philadelphia/voting-machines-philadelphia-controversy-presidential-election-20190219.html>

target to the April 2020 Presidential Primary would only extend the selection timeline to July 2019. And because unexpected delays can occur in implementation of the new system, it is important to move forward with a system for the November 2019 General Election and minimize the risk of decertification that could be caused by delays.

I know many people have expressed concern about the process, and I want them to better understand the process we have gone through. I would have liked to have time for vendors come in and do demos all over the city, so voters could touch and test the different options, but that is just not possible under the Secretary of State's and Governor's timeline. Like you, I support Best Value, but agree that greater transparency is desirable. But despite my efforts to be more transparent about the Selection Committee's work and the bids that were submitted in response to the RFP, we are limited by the City's procurement rules, including strict confidentiality requirements, which we are respecting. Nonetheless, I have asked for and received approval from the Law Department to release a redacted version of the letter sent to the Commissioners from the Procurement Commissioner to help the public better understand the process that has been undertaken.

While this process has been on going for years, the pace and timeline accelerated this spring and summer with the concern that Philadelphia's machines may be decertified. Across this time, I have met or tried to meet with everyone I could, including your office, to talk about the process, though I do not feel everyone thought it would actually have to be accomplished for the 2020 election. I even tried writing an Op-Ed to the Inquirer but was told it was not likely to be published because there was no "call to action". When I would reach out to groups to speak and offered the topic of new voting system, I was told 'no' and that they would rather hear about the 2018 General Election and stats on youth voting.

To jump start the conversation, I called for the two public comment sessions at the beginning of January, held after work and on a Saturday morning. Those sessions worked and since then we have had a five-week conversation, a full two weeks longer than Montgomery County. I had the PowerPoint, my remarks, and a Spanish translation of my remarks from the public comment sessions posted on our website. To further encourage public participation, I mailed a letter to every elected Judge of Elections in the City and encouraged them to contact my office and offer their opinion. I have been to meetings all over the city to discuss new voting systems; people have mailed, emailed, and called my office, and whole ward party committees have passed resolutions expressing their preference. I met with representatives from the Committee of 70, Neighborhood Networks, Disability Rights PA, Verified Voting, Common Cause, League of Woman Voters, Office of Immigrant Affairs, and the NAACP. Since the beginning of the year, we held the special public comment meetings on January 10th and January 12th and also heard public comments during our regularly scheduled meetings on January 30th, February 6th, and February 13th. We will have public comment before our meeting on February 20th. The meeting on February 13th only had one commenter, and everyone who wished to be heard has been given a chance. Their feedback was communicated to the Selection Committee.

In your letter you addressed the cost of this project which have been reported to be in the range of \$50 to \$60 million. Please note that while costs remain to be determined, the numbers

being discussed publicly include not only the purchase of a new voting system and electronic poll books, but also additional yearly software and warranty contracts for an estimated period of ten years as well as ancillary costs that are about the same regardless of what system we choose or what style of voting Philadelphia goes with. For example, regardless of what system we choose, we will need a new climate controlled, dust free warehouse. We will also need to retrain our board workers and voters, and we would need to dispose of our current Danaher voting machines. In other words, only some of the cost will be for the up-front purchase of the machines, while some of it will be a yearly cost over ten years and still other portions of it will be the same regardless of the system selected.

You also raised a concern that critical security and accessibility elements were not part of the RFP scoring criteria. This is not correct. They were part of the Technical Qualifications that all voting systems must meet. The security questions were released as written by the OIT security experts. In addition, all systems go through rigorous testing by the federal Election Assistance Commission and the Pennsylvania Department of State. Furthermore, on January 28, 2019 the security experts at the University of Pittsburgh and The Blue Ribbon Commission On Pennsylvania’s Election Security released their study, where they recommended that all counties implement “systems using voter-marked paper ballots (either by hand or by machine) before 2020 and preferably for the November 2019 election”. All systems that are certified by the Department of State meet this recommendation, and certification by the Department of State was a requirement of the RFP. This includes voting systems that utilize QR or a bar code. Regardless of the use of bar codes, all systems must contain human readable elements on paper ballots for voter verification. This is a requirement of Department of State certification. In the event of a recount or audit, the human readable element would be what is counted. The following are the security and accessibility requirements in the RFP:

2	Compliance	COMP_1.2	The solution must be compliant with Title IV and Title V of the Americans with Disabilities Act. (Please explain how your equipment accommodates voters in wheelchairs, voters with limited or no sight, and voters with limited or no mobility.)
26	Security	SEC_2.1	The solution must withstand a standard network vulnerability test.
27	Security	SEC_2.2	All information stored in the system should be encrypted using FIPS 140-2 approved encryption.
28	Security	SEC_2.3	Intrusion detection and control protocols must be in place if any part of the system uses any network connections. If third party testing is done, include name and contact information for such third party and at least one sample test results report from that third party.

29	Security	SEC_2.4	All portable components in proposed system (laptops, tablets, printers, etc.) must be trackable, recoverable, disposable, and/or wiped if stolen or removed.
30	Security	SEC_2.5	If any component in the proposed system will accept USB or SD card input, the system must identify and prevent foreign self-executing code and how components can be limited to accepting only pre-approved USB or SD card devices.
31	Security	SEC_2.6	The proposed system must detect and prevent any suspicious software behavior in any part of the system.
32	Security	SEC_2.7	The solution shall enable a "data cleansing" function which purges all protected information on each component which contains protected data when the device is decommissioned. (Purging means that the data cannot be accessed except through extraordinary forensic methods).

To prepare for the selection process, my office as well as the offices of my fellow Commissioners and the Office of Innovation and Technology worked over the last year to thoroughly research voting system best practices across the country. That research included:

- April 2018: Attending demonstrations of voting machines and electronic poll books in Harrisburg PA
- April-September 2018: Requirements discovery and development for Voting Systems and electronic poll books.
 - Requirements from other locales (New Hampshire, Virginia, Ohio, Chicago)
 - Review of Federal and State documentation
 - Input from OIT Security Team
 - Attendance at State/Federal sponsored security symposium in Harrisburg by OIT/City Commissioners
- May 2018: Observation of West Virginia Primary Election
- June 2018: Release of an RFI to better understand the election systems market
- August 2018: Observation of St. Louis Primary Election

As a result, I am confident in saying that our staff are some of the most knowledgeable in the entire state when it comes to voting systems and electronic poll books. They know these systems inside and out, and what is on the horizon as far as innovation. Philadelphia is lucky to have them, which is likely why the Department of State has chosen our staff to serve on several advisory boards. We are in frequent communication with the Department of State regarding voting systems, which now includes a Bureau of Election Security and Technology.

Much has been made about the criteria for the RFP. You have expressed concern that the RFP favors a digital system, while the Auditor General went further to suggest it was written to favor a particular vendor. First, the Best Value RFP was drafted by the Office of Innovation and Technology with substantial input from the Office of the City Commissioners and approved by the Law Department. Second, the Help America Vote Act of 2002 (HAVA) specifically states

that voting systems must be accessible for people with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation as other voters and sets out guidelines for voting machines for those with disabilities. This means that regardless of the method of voting the we choose, we must supply at least one Ballot Marking Device (“digital system”) to each polling place. Therefore, the RFP was written with that selection in mind, to find the best system for Philadelphia regardless if we choose hand-marked paper or all BMD. As to the Auditor General’s claims, they are simply not true. The RFP was written and released at a time when the only system that had been certified by the Department of state was a system by a vendor named Unisyn. There was no guarantee anything else would be certified by February 13th. Indeed, in the responses to our RFI, which was used to inform the writing of the RFP, we saw several full-faced and larger screened paginated systems from multiple vendors which have not been certified at this time or which the vendors chose to not put up for certification.

Below is the voting system criteria from the RFP:

Criteria for Voting Machine Solutions	Weight
<p>Ballot Face Solution’s ability to provide a ballot face and style that accommodates the City’s large candidate pool and offers a familiar look and feel, as well as ease of use, to voters.</p>	15%
<p>Physical Footprint Applicants will be evaluated on the physical footprint of the voting machine solution and its impact on voter throughput, based on the following factors:</p> <ul style="list-style-type: none"> a. The number of machines required to replace existing voting machines at polling places, e.g. voting machine replacement rate or other representative measure, b. The amount of space required for the machines c. Estimated voter throughput based on space requirements for voting machines in a given polling location. 	15%
<p>Delivery Applicant’s ability and commitment to deliver a secure, certified solution within the time frame specified in the Proposal. Demonstrable results with other clients, references from other clients, as well as investigations conducted, or information obtained by the City will all be utilized in evaluating applicants on the following factors which impact delivery:</p> <ul style="list-style-type: none"> a. Skill, as it relates to meeting the technical and professional services requirements of this RFP b. Reputation among clients, business colleagues, and government or other regulatory authorities c. Experience of Applicant and staff in providing products and services comparable to those requested in this RFP 	10%

d. Administrative and operational efficiency, i.e. ability to provide professional services and project oversight such that implementation is efficient and effective, and oversight by the City is minimized.	
Technical Support & Maintenance Applicant’s ability and commitment to providing ongoing technical support and maintenance throughout the duration of the contract, as required under this RFP. The City will place emphasis on technical support capabilities during the period leading up to an election and on Election Day.	10%
Training and Documentation Applicant’s ability and commitment to providing extensive, detailed training and documentation.	10%
Vendor Diversity Diversity of the Applicant and its suppliers in order to promote long-term competitive development and allocation of experience to new or small businesses, including those owned by minority or disabled persons or by women.	10%
Price / Cost Effectiveness Applicants will be evaluated on the following: a. The cost of the proposed solution b. Pricing flexibility, e.g. lease and purchase options c. The comprehensiveness of their pricing model, e.g. incorporating costs for ongoing services such as maintenance and technical support.	30%

Although the subject of criticism, Ballot Face and Physical Footprint are important factors when you consider several unique characteristics about Philadelphia's elections that are required in any responsible evaluation of possible systems. Philadelphia is required by law to have ADA compliant polling places, an issue that was the subject of previous litigation and a 2009 settlement agreement between the City and Federal Government. Accessibility has to be a major criterion in the evaluation of new polling places before they can be used for voting. Not all polling places are in big school gyms; many are in recreation centers, barber shops, and churches. The voting equipment we have now just fits into the City’s polling places. An increase in the number and physical footprint of machines would limit the pool of available polling places, so we must consider how much space new equipment will take up and do our best to ensure that this process requires us to move as few of them as possible.

Philadelphia also has a very long ballot that sometimes attracts many candidates. The 1979 Democratic Primary is the high-water mark for the number of candidates, when 101 candidates ran for Council at-Large². What did not make the paper is that election also featured 24 Democrats for Commissioner, 11 Democrats for Mayor, 21 Democrats for Court of Common Pleas, 13 Democrats for Sheriff, 16 Democrats for the 6th District Council seat, and 10 Democrats for 5th District Council seat. The ballot was so big that the Commissioners had to

² Otterbein, Holly, and Chris Brennan. “100 People Ran for City Council at the Height of Anti-Rizzo Furor. Could It Happen Again? | Clout.” Philly.com, Philly.com, 31 Aug. 2018, www.philly.com/philly/columnists/clout/clout-city-council-at-large-candidates-2019-20180831.html.

borrow extra machines from other states because they could not fit the Democrat and Republican ballots on the same machine. In more recent times, we have not been immune to large ballots or at least races with a large number of candidates. The 2015 Primary had 43 Democrats for the Court of Common Pleas and 16 Democrats for Council at-Large. In the 2016 Primary, there were 24 candidates for 2nd Congressional DNC Delegate and 16 in the 1st Congressional DNC Delegate. Last year's Primary Election had 10 Democrats running for the 5th Congressional District and 13 candidates for each Democratic State Committee for the 1st and 7th Senate Districts. Our general election ballots are often long as well with judicial retention races and ballot questions.

In the RFI responses there were machines of many different screen sizes and orientations. Multiple vendors presented full-faced options. One vendor presented a medium sized screen that could be set in either a vertical or horizontal position. However, most vendors offered a small screen option, about the size of an iPad. The smaller the screen, the fewer number of races can fit on the screen at one time. Some vendor's products took as many as 40 screens to display the 2015 General Election ballot. This would also affect a system's foot print because the more screens it takes these "paginated" systems to display a ballot, the longer it takes for a voter to complete the process, and the more machines we would have to be add to a polling place to prevent long lines from forming. Orange County, California uses a paginated system and they send as many as 12 machines to some of their voting precincts. In addition, the election code requires us to appoint an additional machine inspector for every machine that we add to a polling place. This would be an additional cost to the City as each machine inspector is paid \$115 for the day plus \$30 for attending the training. Adding just one additional machine to every division could cost as much as \$245,340 per election.

Smaller screens also mean that fewer candidates can be displayed on the screen at one time. For example, if a screen could only fit 7 candidates' names, and there were 10 candidates in the race, then a voter would have to scroll to the next page to see the final 3 candidates. Elsewhere in the country, this has been known to cause confusion among voters who have trouble finding their chosen candidate³. Since Pennsylvania does not allow for ballot rotation, those candidates on the later pages would always appear in the same location. We are concerned that such a dramatic difference in ballot position could have a direct effect on elections in Philadelphia. And chief among our concerns throughout this process is that the system we choose not affect the outcome of future elections, that is up to the voters. The feedback that we have received from the public supports the decision to include the ballot face criteria in the RFP: we have heard from voters who would like us to keep our current machines, voters who would like us to move to a hand-marked paper ballot method of voting, and from voters who want us to move to a new system but would like to continue to vote on a full-faced system, not one person has contacted our offices to advocate for a paginated system.

I would also like to address the comments by the Auditor General, which I found personally hurtful because he implied, without any proof, that myself, my fellow Commissioners,

³ Dial, Steven. "JoCo Voting Machine Ballots May Create Confusion." KSHB, 27 July 2018, www.kshb.com/news/local-news/new-ballots-on-johnson-county-voting-machine-create-confusion.

and other City employees were somehow improperly influenced and were not looking out for the voters' best interest. The Auditor General could not be further from the mark. His letter dated January 10th asked about gifts and trips paid for by vendors since 2013. Our response was that we had nothing to report, as we have not received any gifts or vendor paid for trips. Though he did not ask, we included, for maximum transparency, the fact-finding trips that were reimbursed by the City or paid for out of pocket. We met early in the process with Board of Ethics staff and the Chief Integrity Officer to make sure that we were avoiding anything that could even be perceived as unduly influencing the process. Furthermore, all vendors responding to the RFP had to complete the mandatory disclosure of any gifts to City employees or any solicitation of gifts from City employees, every responding vendor had nothing to disclose. I hope that you can see that this whole evaluation was well researched and well thought out with what is best for Philadelphia's poll workers and voters as the number one factor in all decisions.

Lastly, I would like to state that we are talking about the system on which the voters of Philadelphia will chose their democratically elected leaders probably for the next decade. It is important to note that no matter what the tone the conversation takes, public concerns about the security and safety of new voting systems, despite the fact that they have been certified by the Department of State, could undermine voters faith that their votes will count and cause Philadelphia's voters to stay home on Election Day instead of voting. Through this process, we have done and will continue to do our best to achieve a result that is effective for Philadelphia's elections and ensures that Philadelphians remain confident that their vote counts.

I hope this letter was able to answer all your questions and concerns about the process to procure our new voting system. If there is anything else that you require from me, my fellow Commissioners, or our staff please do not hesitate to reach out. I look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa M. Deeley". The signature is fluid and cursive, with the first name "Lisa" being the most prominent.

Lisa M. Deeley, Chairwoman
City Commissioner

CC: Commissioner Al Schmidt, Vice Chair
Commissioner Anthony Clark
Mayor James Kenney
Council President Darrell Clarke
Christine Derenick-Lopez, Chief Administrative Officer
Mark Wheeler, Chief Information Officer
Auditor General Eugene DePasquale