

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

ELECTION SYSTEMS & SOFTWARE, LLC,

Plaintiff,

v.

No.

COUNTY OF COOK, a body politic and
corporate organized under the laws of the State
of Illinois,

COOK COUNTY BOARD OF
COMMISSIONERS,

and

COOK COUNTY OFFICE OF THE CHIEF
PROCUREMENT OFFICER,

Defendants.

COMPLAINT

Plaintiff, Election Systems & Software, LLC (“ES&S”), for its Complaint against Defendants the County of Cook (“Cook County” or the “County”), the Cook County Board of Commissioners (the “Cook County Board” or the “Board”), and the Cook County Office of the Chief Procurement Officer (the “OCPO”) states as follows.

INTRODUCTION

1. This is an action brought pursuant to 55 ILCS 5/1-6007 and 735 ILCS 5/3-102, seeking judicial review of two final administrative decisions issued by the OCPO, both of which denied protests filed by ES&S challenging the OCPO’s determination to award a contract for election equipment to Dominion Voting Systems, Inc. (“DVS”).

2. ES&S seeks a declaratory judgment and permanent injunctive relief to stop Defendant Cook County Board from approving a ten-year contract between the County and DVS, valued at \$30,999,891.00, for the provision of election equipment to be utilized by the County Clerk in the approximately 1,600 precincts in Cook County, outside of the city of Chicago, on any Countywide Election Day (the “Election Equipment Contract” or the “Contract”).

3. In response to the Request for Proposal Number 1718-16167 for Election Equipment (the “RFP”), ES&S submitted a timely proposal to the OCPO and would have had a chance to be awarded the Contract but for the acts of Defendant OCPO.

4. After the OCPO eliminated ES&S from competition and engaged in contract negotiations with DVS, ES&S alerted the OCPO that DVS’s proposed voting system was not compliant with Illinois law, and likewise could not meet the requirements of the RFP, because it had not been certified by the Illinois State Board of Elections (“ISBE”).

5. Despite being made aware of DVS’s lack of certification, the OCPO attempted to move forward with awarding a contract to DVS, by issuing a public notice of its decision to seek approval from the Board to award the Election Equipment Contract to DVS. In response to this notice, ES&S filed an initial protest, and later a supplemental protest, challenging the OCPO’s action.

6. While ES&S’s protest was pending, DVS received an interim conditional for its voting system from the ISBE.

7. After that certification was issued, the OCPO denied ES&S’s pending protest and once again issued a public notice of its decision to seek approval from the Board to award the

Election Equipment Contract to DVS. ES&S once again protested, filing a second protest with the OCPO on September 11, 2018.

8. On September 21, 2018, the OCPO notified ES&S that its second protest was also being denied and that OCPO would present the Election Equipment Contract to the Cook County Board for approval at the Board's September 26, 2018, meeting.

9. ES&S now seeks judicial review of the OCPO's two final decisions denying ES&S's initial bid protest and second bid protest. In specific, ES&S seeks a declaration that the OCPO did not comply with the RFP, the Illinois Election Code, and the Cook County Procurement Code; that DVS's proposal in response to the RFP did not conform to the requirements of the RFP and to the Illinois Election Code; and for these reasons a contract award to DVS would be improper. ES&S further seeks an injunction from this Court, requiring the OCPO to either cancel the procurement, recommend commencing contractual negotiations with the next qualified respondent to the RFP, or re-issue the RFP.

THE PARTIES

10. Plaintiff Election Systems & Software, LLC is a limited liability company. The sole member of ES&S is Government Systems, Software & Services, Inc., a corporation organized under Delaware law. ES&S is a limited liability company organized under Delaware law with its principal place of business in Omaha, Nebraska.

11. Defendant, Cook County is a body politic and corporate organized under the laws of the State of Illinois.

12. Defendant Cook County Board of Commissioners is the governing board and legislative body of the County.

13. Defendant Cook County Office of the Chief Procurement Officer is a public agency tasked to procure goods and services on behalf of Cook County.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1332, because this is an action between citizens of different States and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the actions giving rise to ES&S's claims occurred in this district.

STATEMENT OF AGENCY DECISIONS TO BE REVIEWED

16. ES&S was a party of record to two final decisions issued by the OCPO, each denying protests filed by ES&S concerning a contract award to DVS. ES&S now seeks judicial review of each administrative decision.

17. First, on August 31, 2018, OCPO issued a final decision denying ES&S's March 12, 2018 initial protest and July 17, 2018 supplemental protest, related to OCPO's March 9, 2018 notice of decision to award the Election Equipment Contract to DVS. A copy of the August 31, 2018 decision is attached to this Complaint as Exhibit 1.

18. Second, on September 21, 2018, OCPO issued a final decision denying ES&S's September 11, 2018 protest related to OCPO's September 7, 2018 notice of decision to award the Election Equipment Contract to DVS. A copy of the September 21, 2018 decision is attached to this Complaint as Exhibit 2.

LEGAL FRAMEWORK

Illinois Election Code

19. The Illinois Election Code requires that “[t]he State Board of Elections shall approve all voting systems provided by this Article.” 10 ILCS 5/24A-16. The Election Code further provides:

No vendor, person, or other entity may sell, lease, or loan, or have a written contract, including a contract contingent upon State Board approval of the voting system or voting system component, to sell, lease, or loan, a voting system or voting system component to any election jurisdiction unless the voting system or voting system component is first approved by the State Board of Elections pursuant to this Section.

Id.

Cook County Procurement Code

20. Cook County Procurement Code Section 34-138(g) governs protests of County RFPs or RFQs. The bid protest regulations provide for relief from acts that undermine the objectives and integrity of the procurement process:

Any interested party who has a complaint about the RFP or RFQ process may submit a protest in writing and directed to the CPO. For all Contracts requiring Board approval, any protest must be submitted no later than three business days after the date upon which the CPO posts the recommended contract for award. . . . The subject of the protest for any RFP or RFQ shall concern fraud, corruption or illegal acts undermining the objectives and integrity of the procurement process. Any RFP or RFQ protest must be submitted no later than three business days after the date upon which the CPO posts the recommended Response or Proposal for award. The protest must contain a detailed statement of the factual and legal grounds of the protest, including all relevant documents and exhibits that demonstrate fraud, corruption or illegal acts having the effect of undermining the integrity of the procurement process and the action requested of the CPO. A protest based on an issue which could have been clarified through a request for clarification or information, will not be considered if the protestor failed to make such request. When a protest has been submitted, no further action shall be taken on the Procurement until the CPO makes a decision.

The CPO shall issue a written decision on the protest to the protestor and to any other Respondent or Proposer affected by such decision as soon as reasonably practicable. If the protest is upheld, the CPO shall consult with the Using Agency,

and may exercise any of the following remedies: cancel the procurement; recommend commencing contractual negotiations to the next qualified Respondent or Proposer, or re-issue the RFP or RFQ.

FACTUAL BACKGROUND

The RFP

RFP Technical Specifications

21. On or about May 27, 2017, Cook County issued RFP Number 1718-16167 for the purchase or lease of a blended voting system using both optical scan ballots marked using a pen and optical scan ballots generated by a touch-screen ballot marking device.

22. The stated purpose of the RFP was to “invite the submission of proposals regarding an election machinery system for the County that will fulfill the requirements set forth in this RFP.”

23. Section 2 of the RFP addressed the scope of the Contract and made clear that any voting system purchased by the Clerk must be certified by the ISBE:

As an election authority within the State of Illinois, the Clerk is barred by law from purchasing any system that is not certified by the Illinois State Board of Elections, an agency of the State of Illinois. Each Proposer is responsible for acquainting itself with the State Board’s certification procedures, and for its system being certified in an appropriate and timely fashion before use in an election. The State Board’s certification procedures reference the Voting System Standards of the Election Assistance Commission.

Each Proposer is responsible for acquainting itself with the standards and procedures required for appropriate certification, and to be certified in a timely fashion.

No proposed system can be adopted unless it possesses certain minimum capabilities, as set forth by statute and regulation. Proposals submitted must set forth how a proposed system will meet the requirements set forth in this section and elsewhere in the RFP.

24. In addition to this mandatory certification by the ISBE, Section 2 of the RFP further outlined twenty-three requirements with which any proposed voting system must comply.

These requirements included such topics as ballot secrecy, ballot control mechanisms, election day set-up and testing, and election judge initials detection by optical scans. Section 4 of the RFP set forth the requirements for future system attributes and capabilities, and Section 5 outlined system specifications for ballot touchscreen displays.

25. In order to demonstrate compliance with the requirements of the RFP, in addition to submitting a proposal, offerors were required to fill out a System Requirements Matrix that was attached to the RFP and that defined functional and technical priorities in the RFP. The first system requirement identified in the matrix addressed whether the proposed voting system was certified with the ISBE. In total, the System Requirements Matrix identified over thirty functional and technical priorities that offerors needed to address by providing a self-rating regarding the level of functionality their system offered for each priority.

RFP Submission Instructions and Evaluation Criteria

26. The RFP required the submission of proposals by July 7, 2017.

27. County personnel would review all proposals to ascertain that they were responsive to all submission requirements. To be responsive, a proposal needed to be compliant with all the submission requirements of the RFP.

28. Once all responsive proposals were identified, an evaluation committee would evaluate those proposals in accordance with the RFP's stated evaluation criteria:

16.2 Technical Proposal

Proposals will be reviewed and selected based on the following criteria:

1. Quality of the proposed Plan of Action, Project Approach, Project Management and Methodology, including implementation schedule, support in the post implementation phase and understanding of the County's needs goals and objectives.
2. Qualifications and specialized experience for the Proposer to successfully perform the services for the County, as evidenced by the successful

implementation of similar projects in at least three (3) large complex public sector organizations. Preferably city, county, state, or other government entities.

3. Qualifications and experience of the proposed key personnel as evidenced by relevant experience.
4. Level, quality, and relevancy of proposed participation by certified MBE/WB firms.
5. Financial stability of the Proposer.

16.3 Price Proposal

Price will be evaluated separately for overall reasonableness.

Submission of Proposals and the OCPO's Elimination of Offerors

29. On or before July 7, 2017, ES&S, DVS, and three other offerors submitted proposals to the OCPO in response to the RFP.

30. At the time it submitted its proposal, DVS's voting system was not certified for use by the ISBE as the RFP required, in order to be eligible for contract award, and as required by 10 ILCS 5/24A-16.

31. On information and belief, DVS did not submit an application for the certification of its voting system to the ISBE before submitting its proposal to the OCPO.

32. On November 30, 2017, more than four months after receiving proposals, the OCPO advised ES&S that its proposal was no longer under consideration. The OCPO further advised that it would complete its selection process in accordance with the solicitation and award a contract. It did not provide additional information on the evaluation process to ES&S at that time, but stated that once the evaluation process was complete, ES&S could contact the OCPO to request a debriefing of its proposal.

33. On information and belief, on or around November 30, 2017, the OCPO likewise rejected the proposals submitted by the three other offerors and began contract negotiations with DVS.

34. After learning that the County had entered negotiations with DVS and would seek approval for a contract award, ES&S notified the OCPO on December 19, 2017, that DVS did not have an eligible certified voting system that met applicable Illinois law. ES&S objected to continued negotiations with DVS as illegal and inconsistent with the RFP.

35. Approval of the contract award to DVS had been put on the Cook County Board agenda in this timeframe, but after the Board was made aware of DVS's certification status (or lack thereof), the approval was pulled from the agenda.

36. The OCPO did not respond to ES&S's December 19, 2017 letter. Instead, the County continued negotiations with DVS.

The OCPO's Notice of Decision to Award a Contract to DVS, ES&S's Initial Protest, and OCPO's Delayed Response to the Initial Protest

37. On March 9, 2018, OCPO issued a public notice of its decision to seek approval from the Board to award the Election Equipment Contract, valued at \$30,999,891.00, to DVS.

38. As of March 9, 2018, DVS's voting system still was not certified by the ISBE.

39. ES&S was statutorily mandated to file a protest of the OCPO's March 9, 2018 public notice within three days of the notice being posted. Thus, on March 12, 2018, ES&S filed a protest with the OCPO, challenging the proposed award to DVS (the "Initial Protest"). Notably, ES&S was required by law to file its protest *before* the County and DVS could actually execute a contract.

40. In its Initial Protest, ES&S alleged that the OCPO's proposed award of the Election Equipment Contract to DVS violated the terms of the RFP, the Cook County

Procurement Code, and the Illinois Election Code. ES&S reiterated its position that DVS had not proposed an eligible voting system that satisfied the requirements of the RFP and Illinois law. In specific, ES&S argued that a review of voting system certification records showed that the last DVS voting system certified was in 2014 and was granted a two (2)-year interim approval. Further, ES&S argued that the DVS system previously given interim approval in 2014 did not meet all the specifications of the current RFP, and thus DVS would need to apply for certification of the new system it was proposing in response to the RFP.

41. ES&S's Initial Protest argued that the County's efforts to purchase a voting system that was not certified by the ISBE raised serious concerns regarding the integrity of the procurement process, and ES&S requested that (i) no further action be taken with respect to the Election Equipment Contract until its protest was resolved; and (ii) that the County publish or otherwise make available its justification and/or documentation for awarding the contract to DVS, including its evaluation of whether DVS satisfied the requirements imposed by Illinois law and set forth in the RFP.

42. Pursuant to the Cook County Procurement Code, the County was required to respond to ES&S's protest "as soon as reasonably practicable," *see* Code Section 34-138(g), yet the County did not respond to ES&S's protest for over five months.

43. Instead, on information and belief, Cook County officials delayed issuing a protest decision in order to provide DVS with time to apply for and obtain its missing requisite ISBE certification.

44. On information and belief, DVS did not request certification of its voting system from the ISBE until *after* ES&S's Initial Protest was filed.

**The ISBE Grants a Two-Year Interim Approval to DVS's Voting System,
Subject to Compliance with ISBE Staff Recommendations**

45. After ES&S's protest had been pending for nearly three months, and roughly a year after DVS had submitted its proposal in response to the RFP, the ISBE issued staff recommendations on July 2, 2018, to grant DVS a two-year Interim Approval for its voting system, so long as a number of conditions were met.

46. The ISBE staff recommendations were voted on and approved by the ISBE on July 10, 2018, thus granting DVS a two-year interim certification, so long as DVS followed the ISBE staff recommendations aimed at correcting notable problems with DVS's voting system.

47. In order to determine whether to grant DVS's system certification, the ISBE conducted a test campaign of DVS's voting system. This testing revealed a voting system that was woefully unprepared to support the needs of the second most populous county in the country.

48. ISBE encountered many hurdles in testing DVS's system, and evaluators observed many errors with the system, such as paper ballots that could not be scanned if fed into the reader face up and head first and a write-ballot "diverter" that generated sufficient noise to degrade ballot privacy.

49. Most importantly, the evaluators discovered that the commercial-off-the-shelf printers used by DVS could produce two legitimate ballots. In specific, as designed, DVS's voting system requires the election judge to provide an electronic signature to authorize the use of the machines on election day. Once the voter has marked their ballot, the machine prints the ballot with the digital signature from the judge. If there was a paper jam during the printing process, the evaluators observed that the printer would automatically produce two signed and valid ballots. Rather than require that DVS correct this serious problem before obtaining

certification, the evaluators provided some possible solutions and recommended the system receive interim certification.

50. The evaluation did not document whether the ISBE tested its proposed solutions or considered whether its proposed solutions comported with the Illinois Election Code requirements for election judge signatures or ballot privacy.

ES&S's Supplement to Its Initial Protest

51. ES&S learned in July 2018 that the ISBE had granted interim conditional certification to DVS's voting system. Yet, ES&S was still awaiting a response from the County to its Initial Protest filed in March.

52. Concerned that the County was ignoring its Initial Protest, ES&S filed a supplemental protest with the OCPO on July 17, 2018 (the "Supplemental Protest").

53. ES&S's Supplemental Protest alleged that the County had undermined the integrity of the procurement process and violated the terms of the RFP by delaying a protest decision until DVS—the County's preferred, but ineligible, vendor—received certification of its previously uncertified voting system.

54. ES&S's Supplemental Protest also pointed out that, given the myriad of issues identified by the ISBE, together with the recent acquisition of DVS, the County had to, at the very least, reevaluate its award decision and take this new information into account.

The OCPO's First Bid Protest Decision

55. On August 31, 2018, more than five months after ES&S filed its Initial Protest with the OCPO, and more than eight months after ES&S first alerted the County that DVS's voting system was not certified by the ISBE and therefore not eligible for award, the County issued a decision denying ES&S's protest. *See* Exhibit 1.

56. In its decision, the County did not deny that DVS had proposed a system that was not certified by the ISBE, nor did it deny that DVS's system remained uncertified when the County made its award decision and sought approval from the Board of Commissioners on March 9, 2018. The County likewise ignored the protest allegation that DVS had not even requested certification until *after* ES&S's Initial Protest was filed. *Id.* at 7-11.

57. The County asserted that after the protest was filed, it took no further action on the procurement while it considered the merits of ES&S protest. *Id.* at 10.

58. The County also asserted that it "sought legal advice from the [Cook County State's Attorney's Office] and the position from the Clerk's office in order to fairly and accurately assess the requirements concerning certification for voting system [sic]. . . ." *Id.*

59. The County did not state whether it had actually received the position of the State's Attorney's Office or that of the Clerk's office or what those positions were.

60. Instead, the decision alleged that four months after the protest was filed and "[p]rior to finalizing its decision, the [State Board of Elections] granted interim approval to DVS." *Id.*

61. With DVS having received interim approval more than a year after it submitted its proposal, the County believed that it was now authorized to award its previously proposed contract. *Id.*

62. The County also took the position that because ES&S protested before the County actually awarded a contract, *as ES&S was statutorily required to do*, the County never, in fact, violated the prohibitions in the RFP or the Illinois Election Code to enter into a contract with a vendor whose system was uncertified. *Id.* at 9-10.

63. Despite its statement that it took no further action on the procurement, the County did admit that it engaged in discussions with DVS after the protest was filed to address the question of DVS's acquisition. *Id.*

64. On information and belief, the County continued to engage in other discussions concerning DVS's proposal during the pendency of the protest decision.

65. Finally, the County admitted that its proposed award was based upon its original evaluation, and that it did not consider whether DVS's voting system still met the requirements of the RFP in light of the issues identified by the ISBE and the required changes upon which DVS's interim approval was contingent. *Id.* at 10-11

**The OCPO's Second Notice of Decision to Award a Contract to DVS
and ES&S's Second Protest**

66. On September 7, 2018, just seven days after denying ES&S's Initial Protest, the OCPO swiftly issued a new notice of decision to award the Election Equipment Contract to DVS.

67. On September 11, 2018, ES&S protested this new notice of decision to award the Election Equipment Contract to DVS (the "Second Protest").

68. In its Second Protest, ES&S first alleged that the County had violated the Cook County Procurement Code requirement of "no further action" by effectively allowing DVS to cure its defective proposal, by permitting DVS to seek its missing certification, instead of issuing a protest decision based upon the deficiencies that existed in DVS's proposal on March 9, 2018, when the County originally proposed an award.

69. Rather than acknowledging the validity of ES&S's protest, the County abused the bid protest process to ensure it could make an award to its preferred, but ineligible, vendor.

70. ES&S also alleged that the ISBE required changes to DVS's voting system, and that the County was required to evaluate whether the system, as changed, still complied with the requirements of the RFP. The County's failure to perform such an evaluation demonstrated that it was more interested in making an award to DVS than in ensuring a fair procurement process or in procuring a system that complied with the RFP and the law.

71. ES&S requested that, at the very least, the County re-evaluate DVS's proposal as changed.

72. Finally, ES&S's Second Protest argued that DVS's original proposal—to the extent it represented DVS's voting system was certified—should have been rejected to preserve the integrity of the procurement process.

The OCPO's Final Decision in Response to ES&S's Second Protest

73. In its first protest decision, the OCPO asserted that because of "the complexity of the issues" it was not reasonably practicable to issue a final decision on ES&S's Initial Protest for *172 days*. Exhibit 1 at 10.

74. On September 21, 2018, *in just 10 days*, the OCPO denied ES&S's Second Protest. Exhibit 2 at 1.

75. In its decision, the OCPO took the position that the protest of the September 7, 2018 award recommendation was an invalid appeal of the prior protest decision, despite the fact that ES&S raised new allegations concerning the County's violation of the bid protest process, its failure to re-evaluate DVS's proposal, and DVS's potential misrepresentations regarding its certification at the time it submitted its proposal in 2017. *Id.* at 3-4. Despite taking this position, the County responded to the substance of the protest allegations.

76. First, the OCPO alleged that the requirement to take “no further action” merely required the County to withdraw a proposed contract award and “take no further action” to approve the contract. *Id.* at 4.

77. The OCPO did not deny that it reconsidered DVS’s eligibility for award in light of the newly issued interim certification and did not acknowledge that it had engaged in improper discussions with DVS during the pendency of the protest.

78. Second, in response to the allegation that the OCPO was required to reconsider DVS’s proposal in light of the issues with DVS’s voting system identified by the ISBE and the changes that DVS was required to make to the system, the OCPO merely reiterated that DVS’s proposal “was evaluated and determined to meet the requirements of the RFP.” The OCPO did not address whether or not it actually considered the issues raised in the certification process. Instead, the OCPO acknowledged that it was still relying on the evaluation that was performed before the system was submitted for certification. *Id.*

79. Third, in response to the concerns ES&S raised about DVS’s proposal representations, the OCPO did not acknowledge whether or not DVS’s proposal identified its voting system as certified. Instead, the OCPO provided the vague statement that “DVS informed the Evaluation Committee regarding its certification status at the time the RFP was submitted” *Id.* at 4-5.

80. The decision also asserted that “the [Office of the Chief Procurement Officer] fully considered the question of whether certification from the [State Board of Elections] was required prior to entering into a contract for voting systems” However, the decision again failed to identify what position the Chief Procurement Officer actually took on this issue after this lengthy consideration process. *Id.*

The OCPO's Third Notice of Decision to Award a Contract to DVS

81. Shortly before issuing its final decision to ES&S's Second Protest, the County Clerk recommended that the Board of Commissioners approve the award of the Election Equipment Contract to DVS during its September 26, 2018 meeting.

82. Specifically, on the Board of Commissioners' Agenda for Wednesday, September 26, 2018, is the request for authorization for the County Chief Procurement Officer to enter into and execute a \$30,999,891 contract with DVS for election equipment. The Agenda breaks down the potential fiscal year budget impact of this contract award, identifying the FY 2018 fiscal impact to be \$11,539,892.00.

COUNT I – DECLARATORY RELIEF

83. Paragraphs 1 through 82 are incorporated by reference.

84. Actual controversies have arisen between Plaintiff ES&S and Defendants due to the County's decision to deny ES&S's protests and award a contract for election equipment to DVS, denying ES&S an opportunity for an award. *See* 28 U.S.C. § 2201.

85. ES&S, having submitted a responsive proposal to provide Cook County with election equipment that was properly certified by the State Board of Elections, was denied the fair opportunity to compete for the contract when Cook County rejected its proposal in favor of a proposed award to DVS, whose system was not certified and therefore not eligible for award of the subject contract. ES&S accordingly has a legal interest in the resolution of this controversy.

86. A declaration that Cook County violated the terms of the RFP, the Cook County Procurement Code, and the Illinois Election Code is necessary to resolve this dispute between the parties.

87. The only logical conclusion in this case is that the spirit and intent of the RFP was to award a contract to an offeror whose voting system was certified by the ISBE.

88. The Cook County Procurement Code required ES&S to protest the County's planned action to award the Election Equipment Contract to DVS within three days of the OCPO posting the recommended contract for award. That protest thus was required to be filed *before* the County could actually enter into a written contract with DVS. As Defendants would have it, ES&S's Initial Protest was properly denied because the County had not violated the letter of the law on the date ES&S's protest was filed since it had not yet contracted with DVS, whose system was not certified at the time of the Initial Protest. The relevant statutory provisions cannot be read so as to allow the County to avoid liability for contracting with a vendor whose voting system was not certified, simply due to the technicality requiring a protestor to submit its protest before the contract is entered into. Such a result would render the Procurement Code's bid protest provisions meaningless because they would have no teeth when applied to certification of election equipment.

COUNT II – INJUNCTIVE RELIEF

89. Paragraphs 1 through 82 are incorporated by reference.

90. A permanent injunction is necessary to preserve the status quo and to preclude Cook County from awarding a contract to DVS and to immediately begin purchasing \$11,539,892 or more in election equipment and related services from DVS in violation of the terms of the RFP, the Cook County Procurement Code, and the Illinois Election Code in connection with the County's decision to evaluate and award a contract to an ineligible offeror.

91. ES&S will suffer an immediate, irreparable injury for which it has no adequate remedy at law if the County awards DVS the subject contract and proceeds with purchasing election equipment and services.

92. ES&S was eligible for award, and its voting system was certified by the ISBE at the time it submitted its proposal. Had Cook County evaluated proposals consistent with the terms of the RFP, the Cook County Procurement Code, and the Illinois Election Code, ES&S likely would have been further considered for contract award and not eliminated from competition.

93. ES&S has a reasonable likelihood of prevailing on the merits of its claim, as Cook County's actions favoring DVS, clearly violated the spirit and the letter of Illinois election and procurement law. The Cook County Procurement Code allows for protests of RFP decisions where the RFP has involved fraud, corruption or illegal acts *undermining the objectives and integrity of the procurement process*.

94. The only injury that the County will suffer from the issuance of permanent injunctive relief is the delay in procuring new election equipment. The County has not demonstrated an immediate need to procure this equipment. To the extent the County suffers any harm, such harm is the result of the County's failure to address the concerns first raised by ES&S in December 2017, but to which the County did not respond until August 31, 2018.

95. The grant of injunctive relief would serve the public interest. The public has a strong interest in ensuring that its County officials conduct a fair and competitive procurement process and follow the municipal code. The public also has an interest in ensuring that election equipment purchased by Cook County is properly certified by the State Board of Elections and that the certification process is driven by law, not the desire of a county to shepherd a \$30 million contract to a favored vendor.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Election Systems & Software, LLC respectfully requests that this Court enter judgment providing ES&S with the following relief:

- (a) A declaration that the Cook County Office of the Chief Procurement Officer did not comply with the RFP, the Illinois Election Code, and the Cook County Procurement Code; that DVS's proposal in response to the RFP did not conform to the requirements of the RFP and to the Illinois Election Code; and for these reasons a contract award to DVS would be improper;
- (b) an injunction requiring the OCPO to cancel the procurement; recommend commencing contractual negotiations to the next qualified respondent to the RFP, or re-issue the RFP, as required by Section 34-138(g) of the Cook County Procurement Code;
- (c) an order awarding ES&S its fees and costs for pursuing this action; and
- (d) any further relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

ELECTION SYSTEMS & SOFTWARE LLC

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One of Its Attorneys

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Dated: September 25, 2018