

May 16, 2017

Kami Lynch, City of Appleton

RE: Outagamie County/Municipal Intergovernmental Agreement – Election Equipment Procurement

Dear Kami:

Enclosed for your municipality approval is the Intergovernmental Agreement (2 copies) for Election Equipment Procurement (IGA) between Outagamie County and your municipality. The IGA provides for a cost sharing arrangement for replacement of legacy election equipment.

Please have your municipal board, commission, council approve the agreement and return both copies to the County Clerk by June 16, 2017. The County will sign the two copies of the IGA and return one copy to your municipality.

Following is background related to the IGA for Election Equipment Procurement.

The Outagamie County Clerk recommended in January to the Outagamie County administration and Finance Committee to procure election equipment countywide. Originally, the County Clerk anticipated the request for new election equipment to occur in 2018 for 2019 deployment. However, the County Clerk recommended new election equipment procurement be moved up to 2017 with deployment early 2018 due to the following:

- **New Technology:** Aging (legacy) election equipment countywide has been deployed in some municipalities for over 15 years. Issues have been reported with feeding ballots and several municipal clerks have reported concerns with the reliability of the legacy equipment. Newer technology provides better security, enhanced communications for providing election night results, and the ability to accommodate early voting or an enhanced in person absentee voting process.
- **Equipment Replacement Responsibility:**
  - Municipal Responsibilities - Municipalities are the responsible entity for equipment procurement, replacement, and maintenance.
  - County Responsibilities - Counties are responsible for the bulk of costs related to programming equipment and printing ballots. Municipalities and schools reimburse for their portion of contests/referenda in spring or special elections.
  - Equipment Replacement Costs – A variety of cost share arrangements for replacement of legacy voting equipment has occurred throughout WI. After the federal Help America Vote Act, federal grant monies were available for providing for ADA compliant equipment. However, no federal or state grant monies have been available since to replace legacy equipment.
  - Wisconsin Counties/Municipal Replacements – As of April 2017, 24 counties have either partially or fully replaced legacy election equipment. Approximately 526 municipalities have completed their replacement of legacy equipment with newer technology. Numerous additional counties/municipalities are either considering or have plans to replace equipment.

- **Various Equipment Platforms vs. One Equipment Platform:** Currently, the 33 municipalities that report election results (2 municipalities do not have voters in the county) do so with the following equipment platforms:
  - Sequoia AVC Edge II (ADA compliant equipment)
  - Optical Scan Equipment:
    - Optech III-P Eagle
    - Optech Insight
    - ES&S M-100 (ADA compliant equipment – Automark)
    - Imagecast Evolution (ICE) – newer equipment – C. New London
    - ES&S DS200 (Automark) – newer equipment – V. Wrightstown
  - Paper Ballots (along with Edge II)

Reducing the various equipment platforms to a single platform for most of the county (C. of New London and V. of Wrightstown have purchased new equipment) provides the benefit of most of the county being on a single platform with the following benefits.

- **Single Equipment Platform Benefits:**
  - Consolidating Equipment/Voting Methods: Lower costs for programming and printing. The largest potential savings countywide is the opportunity to bring election media programming in-house. Programming in-house potentially saves an expenditure of approximately \$100,000 (some of which is passed onto municipalities) in a four-election year cycle.
  - Equipment Sharing: The County will procure two pieces of election equipment that provides redundancy if a piece of equipment fails in the future.
  - Enhanced Election Night Reporting: Numerous election equipment platforms do not provide an opportunity to have modem returns to the county. Modem election returns provides for accuracy and speed. Consolidating under a uniform platform provides the benefit of working with one platform to provide unofficial election returns to the county, which are posted for the public, candidates, and media. The set-up of unofficial election returns posting with modem returns also saves labor at the county level (County Clerk and Planning staffs).
- **Legacy Equipment Issues:**
  - Inaccurate Unofficial Election Night Reports: The County Clerk has experienced numerous election night reporting errors of unofficial returns from municipalities. These errors were particularly notable with the 2016 Presidential Election. While the errors are corrected at the County Board of Canvass and/or at recounts; unfortunately, public perception of election accuracy is substantially reduced, and with it, election integrity is diminished in the public's eyes.
  - 2016 Presidential Election Recount Issues:
    - At the 2016 Presidential Election Recount, ADA (Edge) compliant equipment failed to produce ballots in two municipalities with one of the municipality's equipment screen going blank.
    - At the 2016 Presidential Election Recount, hand counted (paper ballots) election ballots were inaccurately tabulated. Newer election equipment produces an image of every ballot cast, which ensures a ballot comparison to the paper ballots within a container.
  - 2016 Presidential Election Audit Issue (Optech III-P Eagle):
    - Three municipalities were audited within Outagamie County with two municipality audits within acceptable limits.
    - One municipality (7 currently deploy Eagle equipment) has legacy Eagle equipment. The 2016 Presidential Election Eagle audit produced results unacceptable to the WI Elections Commission. The unacceptable results occurred in January. The county and WI Elections Commission also ran audits on the same ballots.

- Because of the problems with the equipment audit, municipalities were required in the Spring 2017 Election to deploy special procedures in using the Eagle equipment.
- When new election equipment is certified by the U.S. Election Assistance Commission, equipment must not have error rates of anything over 1 in 500,000 ballot positions with a target error rate of 1 in 10,000,000 ballot positions.
- **WI Elections Commission Advice:**
  - Replacement Guidance: The Wisconsin Elections Commission (WEC) and former Government Accountability Board (GAB) have maintained that when legacy equipment begins to have errors/failures, equipment replacement should occur. However, neither the WEC nor the GAB have provided decommissioning advice.
  - Equipment Failure Liability: The liability of having equipment failures end up at the municipal and county levels with requests for recounts, open records requests, negative media coverage, and distrust by the public.
- **Unofficial Election Results Reporting New Legislation:** Newer legislation (2015 Act 261) requires unofficial election results to be reported more quickly than in the past and that additional municipal and school contests/referenda be reported. Wis. Statutes read as follows:
  - Municipal Reporting Requirement: Wis. Stat. 7.51(4)(c) On election night the municipalities shall report the returns, by ward or reporting unit, to the county clerk no later than 2 hours after the votes are tabulated.
  - County Reporting Requirement: Wis. Stat. 7.60(1) Keep Office Open. On election night the county clerk shall keep the clerk's office open to receive reports from the ward inspectors and shall post all returns. On election night the clerk shall post all returns, by ward or reporting unit, on an Internet site maintained by the county no later than 2 hours after receiving the returns.
  - Number of Reporting Units Countywide: Due to the time limits now imposed, municipal clerks, election inspectors, and county clerk staffs are pressured to post up unofficial results. In Outagamie County in certain spring elections, the number of reporting units has been as high as 122 reporting units.
- **2018 Elections:**
  - Contests: 2018 elections include spring county supervisory, municipal, school races and the fall Partisan elections, which includes the gubernatorial race.
  - Voter Participation: Voter participation will be higher in 2018 vs. 2019 due to the additional fall Partisan elections. The gubernatorial race has been a considerably higher turnout election in the past several elections.
  - Early Voting or Enhanced Absentee Voting Procedures – Proposals are being circulated by municipal clerks for a possibility of providing an enhanced absentee voting procedure which allows for in person voters to cast their ballot within election equipment that can tabulate and store ballots. Legacy voting equipment does not provide this option. The proposals being submitted are optional for municipalities. Legislators may or may not approve an optional procedure or mandate future legislation. Legislation in the future could possibly require a true early voting option versus the current absentee voting method or the proposed enhanced absentee voting procedure being proposed. New voting equipment provides methods for securing the vote within the equipment either for early voting or for an enhanced in person voting procedure.
  - Election Integrity: To ensure election integrity for the 2018 elections, legacy equipment replacement will enhance the election process with newer technology that ensures votes are counted properly, provides for a PDF of every ballot, accurately reports unofficial elections returns for all races/referenda, and provides cost savings with election equipment programming.

Note that if your municipality does not take advantage of the equipment replacement cost share arrangement, all indications are that the county will not provide the county cost share portion in the future when legacy equipment fails.

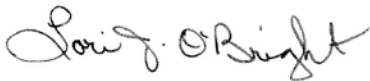
If considering retaining legacy equipment, note that additional election costs will occur with the retention of legacy equipment. Examples of additional costs will include media cost return to the current vendor, larger possibilities of future State equipment audits (as legacy equipment is replaced statewide, the pool of legacy equipment auditable municipalities shrink), and combined maintenance facilitation will need to be provided by the municipality with legacy equipment (possibly increasing future maintenance costs from the vendor).

If you or your municipality would like me to attend your municipal board, trustee, or council meeting, please contact me to schedule my attendance as soon as possible.

Because of the compressed timeframe with procuring election equipment and having it deployed prior to the February 2018 primary, return of the IGA is being requested within one month with the deadline June 16, 2017.

Thank you.

Sincerely,



Lori J. O'Bright  
County Clerk

Enc. Intergovernmental Agreement (2 copies – return both to Outagamie County; one copy will be returned when signed by Outagamie County)  
Resolution No. 4—2017-2018  
pc Town Chairs, Village & Council Presidents (without enclosures)

P.S. Procurement Team:

- If you are a clerk interested in participating in the procurement team, please let me know. Members must be from a municipality who is participating in the IGA.
- If more than one individual from a representative area is interested, a drawing will be conducted to determine the voting member.
- Resolution No. 4—2017-18 (enclosed) specifies the procurement team members as:
  - “a procurement team will be formed consisting of seven (7) members to include
    - three (3) Outagamie County representatives [members: Lori O’Bright, Sara Hickey, IT Shane Polakowski],
    - one (1) City of Appleton representative [member: Kami Lynch],
    - one (1) Fox West area representative,
    - one (1) Heart of the Valley representative, and
    - one (1) representative from the rural municipalities.”
- **All** clerks with municipalities participating in the IGA will be able to give input on the procurement process; voting members of the team are in accord to Resolution No. 4.