

At a term of the Supreme Court held in and for the County of Albany at the Albany County Courthouse, Eagle Street, Albany, New York on the 6th day of February, 2008.

PRESENT:

HON. KIMBERLY O'CONNOR,
Acting Justice.

AVANTE INTERNATIONAL TECHNOLOGY, INC.,

Petitioner,

-against-

NEW YORK STATE BOARD OF ELECTIONS and
DOUGLAS A. KELLNER, EVELYN J. AQUILA, NEIL W.
KELLEHER and HELENA MOSES DONOHUE, SAID
COMMISSIONERS TOGETHER CONSTITUTING THE
NEW YORK STATE BOARD OF ELECTIONS, and THE
NEW YORK STATE OFFICE OF GENERAL SERVICES,

Respondents.

**ORDER TO SHOW
CAUSE**

Index No.

Upon reading and filing the verified petition of Avante International Technology, Inc. ("Avante"), and all the proceedings heretofore had herein, it is hereby

ORDERED, that respondents show cause before this Court at the Albany County Courthouse, in the City and County of Albany, New York on the 11 day of February, 2008 at 1:30 p.m. of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

1. Directing that respondents take any and all actions necessary to approve and otherwise permit petitioner Avante's three machines (EVC 308 SPR BMD; EVC 308 FF42; EVC 308-FF-BMD) to be among those ballot marking devices that were approved by respondents on January 24, 2008 to be examined and included for the vendor selection process for 2008 elections including primaries in the State of New York, and/or

2. Restraining the respondents until further order of this Court from taking any action, including but not limited to issuing list(s) of ballot marking devices approved by respondents to be examined and included in the final vendor selection process for the 2008 elections, including primaries in the State of New York, and

3. Directing the respondents to immediately distribute all petitioner's bid information, including but not limited to petitioner's offered systems and price information, to all County boards of elections, relevant to support the selection of their preferred Ballot Marking Device for use in the 2008 elections, and

4. Directing the Office of General Services to forward to the Office of the State Comptroller a contract for petitioner Avante's machine in accordance with proper procedures, and

5. Granting such other and further relief as to the Court may seem just and proper, and it is further

ORDERED, that respondents are to produce upon the return date of this proceeding any and all original determinations, certifications, resolutions, minutes, audio and video recordings, reports and records of any kind of or relating to respondents' meetings and determinations concerning the subject matter of this proceeding, and it is further

ORDERED, that leave is hereby granted to petitioner upon the return date of proceeding or any adjourned date thereof to submit such additional proof, by way of exhibits or other evidence in support of the petition, and it is further

ORDERED, that until further Order of this Court respondents shall include pe Avante's three machines (~~EVC 308-SPR BMD; EVC 308-FF42~~, EVC 308-FF-BMD) of approved list of ballot marking devices to be tested for use in the 2008 elections including primaries in New York State,

ORDERED, that respondents shall suspend for one week, until February 15, 2008, the Board's certification of the list of machines available for purchase by the counties.

Sufficient cause appearing therefor, it is further

ORDERED, that service of this Order to Show Cause and the Petition upon which was granted upon respondents New York State Board of Elections and Commissioners A. Kellner, Evelyn J. Aquila, Neil W. Kelleher and Helena Moses Donohue, be made by delivering a copy thereof to the New York State Board of Elections, 40 Steuben Street, New York, and giving such papers to a person authorized to accept such papers on behalf of said New York State Board of Elections on or before February ____, 2008, and upon receipt by the New York State Office of General Services by delivering a copy thereof to the New York State Attorney General's Office in Albany, New York on or before February ____, 2008; and such service shall constitute good and sufficient service of the within proceeding.

Signed this ____ day of February 2008 at Albany, New York.

Hon. Kimberly O'Connor
Acting Justice of the Supreme Court