COMMITTEE REPORT

March 21, 2019

**H. 4157**

Introduced by Reps. Lucas, G.M. Smith, Simrill, Bannister and Clemmons

S. Printed 3/21/19--S.

Read the first time March 7, 2019.

**THE COMMITTEE ON FINANCE**

To whom was referred a Joint Resolution (H. 4157) to extend the deadline to submit offers for a solicitation for a statewide voting system solution for the South Carolina Elections Commission and to create a special evaluation panel to evaluate and score, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

HUGH K. LEATHERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on March 5, 2019**

**State Expenditure**

This bill requires SFAA to extend the deadline for offerors to provide a statewide voting system solution for SEC from March 4, 2019, to April 4, 2019. This statewide voting system solution must be fully operational by January 1, 2020. The bill also creates a special evaluation panel to evaluate the proposals received. This panel will be composed of the five members of the SEC. These members are required to receive training on their integrity obligations, the required rules of conduct, and the State Ethics Act prior to assuming any role in the evaluation of proposals or offerors.

**Department of Administration (Admin).** The Executive Director of Admin (director) is required to coordinate the process used by the special evaluation panel to evaluate and score proposals. Admin is permitted to contract with outside experts to provide consultation and advice to both Admin and the special evaluation panel. In the event that a contract cannot be awarded, the director is permitted to direct that the solicitation be amended, or that an alternate source selection method be used. If an alternate source selection method is used, the director is permitted to direct SEC and SFAA to develop an appropriate scope of work and specifications, prepare the appropriate solicitation documents, develop award criteria, administer the procurement process, assist in the scoring and evaluation of any offers, manage the contract, and be responsible for any contract controversies.

To fulfill the duties enumerated in this bill, Admin anticipates the need to retain three consultants for a three-week period to provide consultation and advice to both the department and the special evaluation panel. Admin estimates the hourly fee for these consultants to be approximately $300 per hour, which will result in an estimated expenditure impact of $100,000 to non-recurring general fund expenses in FY 2019-20.

**State Fiscal Accountability Authority (SFAA).** SFAA, in conjunction with SEC, is tasked with assigning personnel as requested by the director to support Admin in assisting the special evaluation panel in evaluating and scoring proposals. SFAA is responsible for administrative duties related to the request for proposals. Once a contract is awarded, SFAA is tasked with managing the contract alongside SEC. In the event that a contract cannot be awarded and the director determines that an alternate source selection method should be used, SFAA, in conjunction with the SEC, is tasked with developing an appropriate scope of work and specifications, preparing the appropriate solicitation documents, developing award criteria, administering the procurement process, assisting in the scoring and evaluation of any offers, managing the contract, and, along with the SEC, being responsible for any contract controversies. SFAA is tasked with awarding the contract to the highest-ranking proposal/offer based upon the scoring of the special evaluation panel.

This bill requires SFAA to perform activities that will be conducted in the normal course of agency business. As a result, this bill does not have an expenditure impact on the general fund, other fund, or federal funds of the agency.

**State Election Commission (SEC).** The special evaluation panel will be composed of the five members of the SEC. These members are tasked with receiving training on their integrity obligations, the required rules of conduct, and the State Ethics Act prior to assuming any role in the evaluation of proposals or offerors. SEC, in conjunction with SFAA, is tasked with assigning personnel as requested by the director to support Admin in assisting the special evaluation panel in evaluating and scoring proposals. Once a contract is awarded, SEC is tasked with managing the contract alongside SFAA. SEC will be the party in interest for any disputes that arise following the execution of this contract. In the event that a contract cannot be awarded and the director determines that an alternate source selection method should be used, SEC, in conjunction with SFAA, is tasked with developing an appropriate scope of work and specifications, preparing the appropriate solicitation documents, developing award criteria, administering the procurement process, assisting in the scoring and evaluation of any offers, managing the contract, and, along with SFAA, being responsible for any contract controversies.

SEC anticipates being able to manage the additional expenses arising from assisting the special evaluation panel in evaluating and scoring proposals within existing appropriations. Therefore, this bill will not have an additional expenditure impact for SEC.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **JOINT RESOLUTION**

TO EXTEND THE DEADLINE TO SUBMIT OFFERS FOR A SOLICITATION FOR A STATEWIDE VOTING SYSTEM SOLUTION FOR THE SOUTH CAROLINA ELECTIONS COMMISSION AND TO CREATE A SPECIAL EVALUATION PANEL TO EVALUATE AND SCORE EACH PROPOSAL.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. (A) The General Assembly finds:

(1) The State of South Carolina desires to contract for a statewide voting system solution. It is intended that the contract for the statewide voting system solution shall provide a turnkey solution to the State Election Commission and the forty‑six counties of South Carolina. It is further intended that the contract shall provide, to the extent possible, for all necessary software, hardware, equipment, supplies, support, and services necessary for a complete and comprehensive solution that meets South Carolina’s requirements for a statewide voting system in a manner that is most advantageous to the State. It is imperative that the statewide voting system solution selected is procured, installed, and tested in the most expeditious manner possible so it is operational by January 1, 2020.

(2) To meet the intentions set forth in item (1), the State Fiscal Accountability Authority (SFAA) issued on December 7, 2018, a Request for Proposal soliciting offers to “Provide a Statewide Voting System Solution for the South Carolina State Election Commission” (Solicitation No. 5400016872). According to the terms of the solicitation, offerors desiring to submit a proposal must do so by 11:00 a.m. on March 4, 2019.

(B) To ensure competition and maximize accountability in the process, the General Assembly directs the State Fiscal Accountability Authority to extend the deadline to submit offers pursuant to Solicitation No. 5400016872 until 11:00 a.m. on April 4, 2019. Unless inconsistent with the provisions of this joint resolution, all other instructions, requirements, conditions, statements of work, specifications, terms, conditions, etc. contained in the solicitation shall remain in full force and effect.

(C)(1) A special evaluation panel is hereby created to evaluate the proposals received as a result of the request for proposal contained in Solicitation No. 5400016872. The special evaluation panel is composed of the five members of the State Election Commission appointed pursuant Section 7‑3‑10 of the 1976 Code. During the period between publication of the solicitation and final award, members of the special evaluation panel must not communicate, directly or indirectly, with any offeror or employees, agents, or officials of any offeror. Before assuming any role in the evaluation of proposals/offerors, members of the special evaluation panel must certify in writing that they will, among other things, avoid conflicts of interests, abide by certain integrity obligations and rules of conduct, and comply with the applicable provisions of the State Ethics Act of the 1976 Code. The integrity obligations and rules of conduct that the special evaluation panel members must agree to abide by shall include, but not be limited to, conducting themselves in such a way as not to adversely affect the confidence of the public or competing offerors in this procurement process, avoiding any action that could result in the appearance that the member lacks independence or impartiality, and avoiding any activity or financial transaction that involves or appears to involve the direct or indirect use of “inside information” to further a private gain for themselves or others. Before assuming any role in the evaluation of proposals/offerors, members of the special evaluation panel must receive such training on their integrity obligations, the required rules of conduct, and the State Ethics Act as the Department of Administration may direct.

(2) The Executive Director of the South Carolina Department of Administration shall coordinate the process used by the special evaluation panel to evaluate and score proposals received by the time specified in this joint resolution and which have been determined to be responsive to Solicitation No. 5400016872 by the procurement officer. The State Fiscal Accountability Authority and the State Election Commission shall assign such personnel as requested by the Executive Director of the Department of Administration to assist the Department of Administration in carrying out its duties under this joint resolution. Additionally, the State Fiscal Accountability Authority and the State Election Commission shall assign such personnel as requested by the Executive Director of the Department of Administration to assist the special evaluation panel. The Department of Administration may contract with an outside expert or experts, including attorneys, to provide consultation and advice to the Department of Administration and to the special evaluation panel in evaluating and scoring proposals. Procurements by the Department of Administration of any expert or experts, including attorneys, pursuant to this joint resolution are exempt from the purchasing procedures of the South Carolina Consolidated Procurement Code.

(3) The special evaluation panel shall evaluate and score all proposals and offerors based on the evaluation criteria included in the request for proposal contained in Solicitation No. 5400016872. The State Fiscal Accountability Authority shall award the contract to the highest‑ranking proposal/offeror based on the scoring of the special evaluation panel subject to the Discussions and Negotiations provision in the solicitation and Section 11‑35‑1530(8) of the 1976 Code.

(D)(1) The State Fiscal Accountability Authority shall continue to serve as the procuring officer for the solicitation. The State Fiscal Accountability Authority is also responsible for administrative duties related to the request for proposals including, but not limited to, required publications, postings, conferences, receipt of proposals, amendments, dissemination of materials to evaluators, instructing/charging evaluators, issuing notifications of award, etc.

(2) Once a contract is awarded pursuant to Solicitation No. 5400016872, the State Election Commission shall manage the contract with the State Fiscal Accountability Authority maintaining all responsibilities vested in it by the South Carolina Consolidated Procurement Code. The State Election Commission shall be the party in interest for any disputes or controversies that arise subsequent to the execution of the contract. The provisions of Sections 11‑35‑4210, 11‑35‑4310, and 11‑35‑4410(1)(b) of the 1976 Code, South Carolina Consolidated Procurement Code shall not apply to the procurement of a Statewide Voting System Solution pursuant to Solicitation No. 5400016872 or pursuant to any other source selection method authorized by this joint resolution. All other provisions of Article 17 of the South Carolina Consolidated Procurement Code related to contract and breach of contract controversies shall apply, including the provisions of Section 11‑35‑4230 giving the chief procurement officer exclusive authority to resolve contract controversies.

(E) If it is determined that a contract cannot be awarded pursuant to Solicitation No. 5400016872 as its currently exists, the Executive Director of the Department of Administration may direct that the solicitation be amended as needed or may direct that an alternate source selection method be used; provided that, should an alternate source selection method be used, the selected method must allow for as much competition as is practicable under the circumstances. If an alternate source selection method is employed, the Executive Director of the Department of Administration may direct the State Election Commission and the State Fiscal Accountability Authority, as is applicable, to develop an appropriate scope of work and specifications, to prepare the appropriate solicitation documentation, to develop award criteria, to administer the procurement process, to assist in the scoring and evaluation of any offers, to manage the contract and to be responsible for any contract controversies that may arise as either the using governmental unit (State Election Commission) or as the chief procurement officer (SFAA). Additionally, the special evaluation panel shall evaluate and score all proposals and offerors received in the time provided in the alternative source selection method and which proposals are responsive to the alternative source selection method based on the evaluation criteria developed during the process. The State Fiscal Accountability Authority shall award the contract to the highest‑ranking proposal/offeror based on the scoring of the special evaluation panel subject to negotiations as provided in Section 11‑35‑1530(8) of the 1976 Code.

SECTION 2. This joint resolution takes effect upon approval by the Governor.

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