EXECUTIVE SUMMARY

SUBJECT: Summary of Revisions to House Bill 7223

REQUESTED ACTION:

☐ Work Session (Report Only) ☒ Regular Meeting ☐ Special Meeting

DATE OF MEETING: 10/11/2011

CONTRACT: ☒ N/A

Vendor/Entity: 

Effective Date: 

Termination Date: 

Managing Division / Dept: Financial Services

BUDGET IMPACT: N/A

☐ Annual ☐ Capital ☐ N/A

FUNDING SOURCE: 

EXPENDITURE ACCOUNT: 

HISTORY/FACTS/ISSUES:

House Bill 7223 revises s. 119.071, F.S., General exemptions from inspection or copying of public records. The bill revises the public records exemption for bids, proposals, or replies submitted to an agency in response to competitive solicitations, and expands the exemption by extending its duration. The bill revises the public meetings exemption for meetings at which negotiations with vendors are conducted pursuant to competitive solicitations. This includes the recording and records of such meetings. The bill also expands the public meetings exemption to include negotiation, team strategy meetings, and any meetings where vendors make oral presentations or answer questions as part of a competitive solicitation. The bill provides statements of public necessity for the exemptions.

Attached is a summary of the revisions and how they affect the Sumter County Board of County Commissioners internal departments, and a copy of the entire bill.
Effective October 1, 2011 CS/HB 7223: OGSR/Competitive Solicitations, revises F.S. 119.071 related to public records exemption for bids, proposals, or replies submitted to an agency in response to competitive solicitations. The entire bill is attached below this summary.

Listed below are the highlighted changes and how they affect the BOCC (Red):

1) The bill provides that any responses to any competitive solicitations are exempt from public records until the agency issues an intended decision or until 30 days after opening the solicitations, whichever is earlier. Any sealed response received for any solicitation will not be open for review by the public or vendors until the Selection Committee decides on a recommendation to take to the BOCC or until 30 days after the opening, whichever comes first. Currently, once a bid/proposal has been opened, all contents including price are available for public review; this will no longer be allowed.

2) The bill provides that if any agency rejects all responses to any competitive solicitations and the agency concurrently provides notice of intent to reissue the solicitation, the rejected responses shall remain exempt from public records. Records will be exempt until the agency provides a notice of intended decision on the reissued solicitation or withdraws the reissued solicitation. However, the bill also provides that a response is not exempt for longer than 12 months after the agency’s initial notice rejecting all responses. If the Selection Committee rejects responses for a solicitation, those responses will not be open for review until a re-bid is issued with a recommendation to the BOCC or the solicitation is withdrawn. The rejection and intent to re-bid must occur concurrently during the Selection Committee meeting. However, rejected responses may be viewed by the public after 12 months even if the re-bid has not taken place.

3) The bill provides that any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, is exempt from (public records) s. 286.011 and s. 24(b), Art. I of the State Constitution. This includes a meeting at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation. Vendor presentations including question & answer sessions and contract negotiation meetings are no longer open to the public or other vendors.

4) The bill provides that any portion of a team meeting at which negotiation strategies are discussed is also exempt. If staff holds a meeting to discuss negotiation strategies, those meetings are not open to the public or vendors.

5) The bill provides that a complete recording shall be made of any portion of an exempt meeting. The recording of any such meeting shall be exempt from public record until such time that the agency provides a notice of intended decision or until 30 days after the opening of the solicitation, whichever is earlier. Recordings shall be made of all exempt meetings. The recordings shall remain exempt from public or vendor access until
the Selection Committee decides on a recommendation to take to the BOCC or until 30 days after the meeting, whichever comes first. Please refer to #3 and #4 for reference to exempt meetings.

6) The bill provides that the recordings of any such meeting shall be exempt if the agency rejects the solicitations and concurrently provides notice of intended decision on the reissued solicitation or withdraws the reissued solicitation. However, the bill also provides that the recordings are not exempt for longer than 12 months after the agency’s initial notice of rejection. If recordings of an exempt meeting are made and the bid/proposal is rejected following those meetings, those recordings shall not be available to the public or vendors until a re-bid is issued and a recommendation is taken to the BOCC. The rejection and intent to re-bid must happen concurrently during the exempt meeting. However, the public and vendors may access the recordings after 12 months even if the re-bid has not taken place.

The Financial Services Department will facilitate these changes EXCEPT when a department holds an internal negotiation strategy meeting or when a vendor-staff contract negotiation meeting takes place. During those two instances, the department representative must record the meeting and send the recordings to the Financial Services Department to add to the original file. It is the department’s responsibility to notify the Financial Services Department if contract negotiations cannot be made and a re-bid is needed.

The department will still be responsible for putting the contract on the agenda for final approval after negotiations take place.

Please contact Mrs. Amanda Taylor via email at Amanda.taylor@sumtercountyfl.gov with any questions relating to these changes. Thank you in advance for your cooperation.
A bill to be entitled
An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for bids, proposals, or replies submitted to an agency in response to a competitive solicitation; expanding the public records exemption by extending the duration of the exemption; providing a definition; reorganizing the exemption; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; amending s. 286.0113, F.S., which provides an exemption from public meetings requirements for meetings at which a negotiation with a vendor is conducted and which provides an exemption from public records requirements for recordings of exempt meetings; expanding the public meetings exemption to include meetings at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, at which a vendor answers questions as part of a competitive solicitation, and at which team members discuss negotiation strategies; expanding the public records exemption to include any records presented at an exempt meeting; providing definitions; reorganizing the exemption; providing for future repeal and legislative review of the public meetings and public records exemptions under the Open Government Sunset Review Act;
providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(b)1. For purposes of this paragraph "competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation invitations to bid or requests for proposals are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an a decision or intended decision pursuant to s. 120.57(3)(a) or until 30 within 10 days after opening the bids, proposals, or final replies bid or proposal opening, whichever is earlier.

3. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation invitation to bid or request for proposals and the agency concurrently provides notice of its intent to reissue the competitive solicitation invitation to bid or request for
proposals, the rejected bids, or proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued competitive solicitation invitation to bid or request for proposals or until the agency withdraws the reissued competitive solicitation invitation to bid or request for proposals. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

2.a. A competitive sealed reply in response to an invitation to negotiate, as defined in s. 287.012, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.

b. If an agency rejects all competitive sealed replies in response to an invitation to negotiate and concurrently provides notice of its intent to reissue the invitation to negotiate and reissues the invitation to negotiate within 90 days after the notice of intent to reissue the invitation to negotiate, the rejected replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency
provides notice of a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued invitation to negotiate or until the agency withdraws the reissued invitation to negotiate. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.

4.e. This paragraph subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (2) of section 286.0113, Florida Statutes, is amended to read:

286.0113 General exemptions from public meetings.—
(2)(a) For purposes of this subsection:
   1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.
   2. "Team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

   (b)1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation s. 287.057(1) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.
   2. Any portion of a team meeting at which negotiation
strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c)(b) 1. A complete recording shall be made of any portion of an exempt meeting made exempt in paragraph (a). No portion of the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are required under subparagraph 1. is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an a decision or intended decision pursuant to s. 120.57(3)(a) or until 30 20 days after opening the bids, proposals, or final replies the final competitive sealed replies are all opened, whichever occurs earlier.

3. If the agency rejects all bids, proposals, or sealed replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an a decision or intended decision pursuant to s. 120.57(3)(a) concerning the reissued competitive solicitation invitation to negotiate or until the agency withdraws the reissued competitive solicitation invitation to negotiate. A recording and any records presented at an exempt meeting are is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

(d)(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand
Section 3. (1) The Legislature finds that it is a public necessity that bids, proposals, or replies submitted to an agency in response to a competitive solicitation be made temporarily exempt from public records requirements. Such records shall be made available when the agency provides notice of an intended decision, or when the agency rejects all bids, proposals, or replies and ultimately withdraws a reissued competitive solicitation. Temporarily protecting such information ensures that the process of responding to a competitive solicitation remains fair and economical for vendors, while still preserving oversight after a competitive solicitation decision is made or withdrawn.

(2) The Legislature also finds that it is a public necessity that a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation be made exempt from public meetings requirements. In addition, it is a public necessity that any records presented at such meetings be made temporarily exempt from public records requirements. The recording of the meeting and any such records shall be made available when the agency provides notice of an intended decision, or when the agency rejects all bids, proposals, or replies and ultimately withdraws a reissued competitive solicitation. Protecting such meetings and temporarily protecting the recording and any records
presented by a vendor at such meetings, ensures that the process
of responding to a competitive solicitation remains fair and
economical for vendors, while still preserving oversight after a
competitive solicitation decision is made or withdrawn. It is
unfair and inequitable to compel vendors to disclose to
competitors the nature and details of their proposals during
such meetings or through the minutes or records presented at
such meetings. Such disclosure impedes full and frank discussion
of the strengths, weaknesses, and value of a bid, proposal, or
response, thereby limiting the ability of the agency to obtain
the best value for the public. The public and private harm
stemming from these practices outweighs the temporary delay in
access to records related to the competitive solicitation.

(3) The Legislature further finds that it is a public
necessity that any portion of a team meeting at which
negotiation strategies are discussed be made exempt from public
meetings requirements. In addition, it is a public necessity
that the recording of such meeting be made temporarily exempt
from public records requirements. The recording of the meeting
shall be made available when the agency provides notice of an
intended decision, or when the agency rejects all bids,
proposals, or replies and ultimately withdraws a reissued
competitive solicitation. Team members often meet to strategize
about competitive solicitations and the approach to take as part
of the evaluation process. Without the public meeting exemption
and the limited public record exemption, the effective and
efficient administration of the competitive solicitation process
would be hindered.
Section 4. This act shall take effect upon becoming a law.