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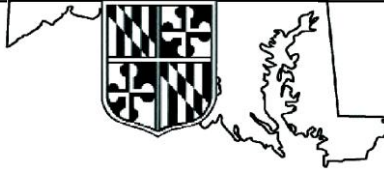
Linda H. Lamone
Administrator

Nikki Charlson
Deputy Administrator

Memorandum

To: Senate Budget and Taxation Committee
February 25, 2020

House Appropriations Committee
Subcommittee on Public Safety and Administration
March 2, 2020

From: Linda H. Lamone
State Administrator of Elections

Subject: Response to Department of Legislative Services' FY 2021 Budget Analysis

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Thank you for the opportunity to respond to the Department of Legislative Services' (DLS) analysis of the State Board of Elections' (SBE) Fiscal Year 2021 budget.

Before providing the requested comments and responses to the proposed budget language, I would like to address several items in the analysis.

1. In the "Agency Election Management System" section of the analysis (page 7), the analysis includes cost estimates for this project. Based on expenses incurred to date and projected estimates for the remainder of the work, we expect that the final cost of this project will be $3.5 million. This is consistent with our original estimate and less than the revised estimate.

   The analysis states that the system may not be used in the 2020 General Election due to issues identified during the special primary election for the 7th Congressional District. This is not correct and does not accurately reflect information provided to DLS just before the analysis was finalized. It is correct that issues were identified during the parallel use of the new system during the special primary election for the 7th Congressional District. These issues will be addressed and re-tested, but they will not prevent the parallel use in the 2020 General Election. During a recent conversation, DLS asked whether the new system would be used in parallel for the 2020 General Election, and we responded that it would be. If the decision is subsequently made to not use the new system in parallel, it will not be based on issues identified nine months earlier.

   In the same section, DLS incorrectly concludes that there is an issue with information sharing between this agency and DoIT. Since the project started in 2017, DoIT's oversight manager has been invited to each weekly project status call and receives weekly project status reports. We also provide DoIT with monthly project status reports and other updates as requested. DLS' conclusion that there is an issue with "information sharing" is

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not correct. We provide DoIT with project status information, and we understand that DoIT shared in its required reports to DLS the status of this project.

2. In the "Wide Area Network" section of the analysis (pages 7-8), the analysis fails to capture accurately how information was shared with the members of the State Board of Elections (Board). From February 2019 through August 2019, the Board received written minutes of monthly Election Directors' meetings in which this network was discussed. Once a feasible solution was identified, the Board was briefed on the proposed plan, and this briefing occurred at the September 2019 Board meeting. Only one member of the five-member Board has expressed the concerns listed in the analysis.

Issues Raised in the Department of Legislative Services' Analysis

The agency should comment on its implementation of WAN, its approach to informing all relevant stakeholders and incorporating their feedback, and the information that it did and did not have regarding the security of the WAN. (page 8)
For the special primary election for the 7th Congressional District, a network was used to connect the electronic pollbooks to a central server. Overall, the network performed as expected. We received thousands of transactions during the day, monitored pollbook activity at over 300 precincts, and loaded voter history into MDVOTERS in time for the three local boards to prepare for the upcoming canvasses.

Around 5:30 pm, we started receiving reports that the electronic pollbooks were slowing down. During this time, we confirmed that the data was being transferred from the polling places to SBE's server. We turned off the network for all of the pollbooks in one county and saw an immediate improvement in the performance of the pollbooks. As a result, we turned off the network about 6:20 pm for the rest of the pollbooks. The performance of the electronic pollbooks immediately improved, and we left the network turned off for the remainder of election day.

As with any new process, we are committed to reviewing election day performance for areas of improvement. We are evaluating reports, identifying possible causes, and testing identified solutions, as we are not satisfied when any voter encounters an unnecessary delay. As a result, the local boards of elections will not be required to implement this system in the 2020 Primary or General Elections. If local boards of elections choose to implement the system, we will work closely with them to ensure a smooth and timely experience for voters in their respective counties. Like all decisions we make, we are taking this step to give voters full confidence that their voting experience will be safe, timely, and secure.

In the months leading up to the special primary election, information was shared with all relevant stakeholders, we received feedback and responded appropriately, and engaged stakeholders in several rounds of testing. Initial planning discussions were dependent upon the enabling legislation adopted by the Maryland General Assembly. Once the legislation was finalized, the planning process began. The local boards of elections and the Board were provided monthly information on the proposed plan to network electronic pollbooks to a central server on election day. Once a feasible solution was identified, the members were

briefed at the September 2019 meeting. In October 2019, we briefed - with two members of the Board present - the Senate's Education, Health, and Environmental Affairs Committee on this network, and discussed it at our October 2019 statewide meeting of election officials. Four members of the Board attended this meeting.   The local boards of elections participated in numerous rounds of testing.

The agency should comment on the board's involvement in and approval of decisions regarding administration of the 2020 election. (page 8)
The Election Law Article of the *Annotated Code of Maryland* defines the respective duties of the members of the Board and the State Administrator. In addition to the duties specifically assigned to the State Administrator in the Election Law Article, the members of the Board have delegated to the State Administrator some of the duties assigned to the Board by statute. Generally, the Board is charged with establishing election policy (e.g., developing and approving proposed departmental legislation, promulgating regulations, authorizing waivers of late fees), while the State Administrator is responsible for administering elections. Examples of recent Board involvement and decisions include the policy related to the use of ballot marking devices and additional early voting center in Montgomery County.

The agency should comment on its approach to accommodating procurement timelines and how it plans to review current practices to ensure adequate time for deliberations its proposed contracts to be reviewed by the Office of State Procurement, DoIT (if applicable), and BPW. (page 8)
Our internal timeline and process for obtaining Board of Public Works' (BPW) approval is sufficient and includes time for external reviews. Often, however, the external reviews take longer than the generous time provided in our timelines.

The contract triggering DLS' request for comment was a contract for election project and support resources approved by the BPW on January 8, 2020. The timeline for this project is listed below.

- April 22, 2019: Submitted to DoIT, the control agency at the time, a draft Task Order Request for Proposals (TORFP)
- August 13, 2019: DoIT's Information Technology Procurement Office (ITPO) gave approval to release TORFP
- August 13, 2019: Issued the TORFP to eligible Master Contractors under the Master CATS Plus contract
- September 18, 2019: Deadline to submit proposals
- September 19, 2019 - October 16, 2019: Reviewed 21 timely proposals for susceptibility for award after a curing period
- October 16, 2019: Eliminated via the authorized "down selection" process eleven proposals
- October 21 – 22, 2019: Conducted oral presentations for the down-selected proposals
- November 4, 2019: Deadline for 1st set of Best and Final Offers
- November 11, 2019: Deadline for 2nd set of Best and Final offers
- November 13, 2019: Sent Intent to Award letters to recommended vendors
- November 15, 2019: Submitted award package to Office of State Procurement (OSP)
- November 21 and 22, 2019: Conducted debriefings

- November 18, 2019: OSP deadline for contract on the December 18, 2019 BPW meeting

As the timeline above demonstrates, we were unable to present the recommended award to the BPW any earlier than the cancelled December 18, 2019, meeting. We complied with OSP's deadline for submitting contract award documents and cannot comment on whether OSP's required 30-day submission deadline is sufficient for its review.

The agency should comment on why funding for the voting equipment was not provided for the full fiscal year in anticipation of plans to proceed with either continuation of the contract or purchase of the equipment and when this decision will be made. (page 9) Funding for the voting equipment was not included in the FY21 budget because at the time the budget was submitted, we did not know if the equipment would be leased, purchased for $12.2 million, or issue a procurement for a new voting system. We are nearing a decision on the best approach for the 2022 elections.

Operating Budget Recommended Actions (pages 10-11)
1. 2022 Pollbook Project Language (page 10): Since the project to replace the existing electronic pollbooks is a Major Information Technology Development Project, we are already required to provide to DoIT the requested information. We can also provide this information to the budget committees.

2. IT Project Activities Language (page 10): I disagree with this budget language as adequate information is already provided to DoIT for Major Information Technology Development projects. As explained above, DoIT's oversight manager is invited to each weekly project status call and receives weekly and monthly project status reports and other updates as requested. The reporting required by this budget language is already provided to DoIT. I am not aware of any requests from the budget committees to which we did not respond or provide the requested information.

3. Communications Plan (page 11): I disagree with this budget language on the grounds that sufficient communication between the State Administrator and staff and the Board already exists. The State Administrator or staff provide the Board with information in a variety of ways, including:
   - Biweekly newsletters with important information for Maryland's election community
   - Minutes of monthly Election Directors' meetings
   - Monthly Administrator's Report (distributed and reviewed at each Board meeting)
   - Important information widely distributed to Maryland's election community
   - Monthly State Board of Elections' meetings
   - Individual communications between board meetings

   The information shared with the Board includes major decisions made by the Administrator and staff regarding election administration, information technology development project management, and significant interactions with the local boards of

elections. If the Board wishes to receive more information to fulfill its statutory duties, it merely needs to ask for it.