

HOUSE BILL REPORT

ESHB 2863

As Passed House
February 15, 1994

Title: An act relating to the jumbo ferry vessel propulsion system.

Brief Description: Facilitating acquisition of a propulsion system for new jumbo ferries.

Sponsors: By House Committee on Transportation (originally sponsored by Representatives Zellinsky, R. Meyers and Schmidt).

Brief History:

Reported by House Committee on:
Transportation, February 7, 1994, DPS;
Passed House, February 15, 1994, 94-4.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives R. Fisher, Chair; Brown, Vice Chair; Jones, Vice Chair; Schmidt, Ranking Minority Member; Mielke, Assistant Ranking Minority Member; Backlund; Brough; Brumsickle; Cothorn; Eide; Finkbeiner; Johanson; J. Kohl; Orr; Patterson; Quall; Romero; Sheldon; Wood and Zellinsky.

Minority Report: Do not pass. Signed by 3 members: Representatives Forner; Fuhrman and Heavey.

Staff: Vicki Fabre (786-7313).

Background: In 1993 legislation (RCW 47.60 770 et seq.) authorized the construction of three new jumbo ferries with a capacity for 218 cars and 2500 passengers.

The major focus of the Jumbo Mark II ferry construction project to date has been the selection of the propulsion system for the vessels. To compress the delivery time of the ships and control the selection of the best technology, the Department of Transportation (DOT), Marine Division proposed the purchase of the complete propulsion plant from one vendor. The propulsion plant contract was awarded to Siemens Energy and Automation, Inc. in September 1993 and provides for one shipset, with the option to purchase

additional shipsets. The winning propulsion plant bid for the three shipsets is valued at \$43.6 million. Approximately \$1.4 million of that contract has been expended.

State agencies must use competitive bid procedures administered by the Department of General Administration, Office of State Procurement (OSP) when contracting for goods and services. The competitive bid statutes include a provision that requires the use of life-cycle cost analysis if there is reason to believe this analysis will result in the lowest cost to the state [RCW 43.19.1911(6)]. Life-cycle cost is defined to mean the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation, maintenance and, where applicable, disposal.

The OSP, in awarding the Jumbo Mark II ferry propulsion contract, decided not to strictly apply life-cycle cost analysis and made its decision on the basis that: (1) the need for public safety, reliable schedules and passenger convenience are of paramount importance and life-cycle costing did not lend itself to the realities of public transportation or offer the best value to the state; and (2) greater weight should be given to having equipment in the new ferries that offers commonality with engines in the fleet, reliability and maintainability.

In November 1993, N.C. Machinery, an unsuccessful bidder on the propulsion contract, filed suit in Thurston County Superior Court against the OSP challenging the process for awarding the propulsion contract and alleging that OSP failed to use life-cycle cost analysis.

The court found that the state acted arbitrarily and capriciously in deciding not to comply with life-cycle costing requirements and enjoined proceeding with the complete propulsion system contract, including engines. The court concluded that the state did not adequately document its decision that the application of life-cycle costing would not result in the lowest cost to the state.

Subsequent to the court's oral order, the parties to the suit agreed in a stipulated order to limit the injunction to engine procurement and allowed Siemens' propulsion system contract to proceed.

The DOT maintains that delay in the immediate construction of the Jumbo Mark II ferries will result in severe and economic loss to the state and that an exemption from state procurement requirements is needed to acquire the engine components of this construction project.

Summary of Bill: Legislative intent is expanded to: (1) substantiate the need for an alternative contracting procedure for the procurement of a propulsion system, and the components thereof, for the Jumbo Class Mark II ferries, and (2) indicate that an outcome of a 1991 legislative study of ferry vessel refurbishment and construction projects is the recommendation by ferry system employees, responsible for the design, operation, and maintenance of state ferries, to consider operational criteria that assess the reliability, maintainability and performance of equipment, parts, and supplies to be installed in the new Jumbo Class ferries.

The DOT is authorized to enter into a contract, without bid, for the acquisition of the propulsion system or any component thereof, including diesel engines and spare parts for installation into one or more of the three Jumbo Class Mark II ferry vessels.

The authorization to enter into such contract does not limit the department from proceeding with any existing contract for acquisition of the propulsion system.

The DOT is required to publish a notice of its intent to negotiate a contract. The notice shall contain information about (1) the identity of the propulsion system or components to be acquired; (2) the proposed delivery dates; and (3) an address and telephone number for obtaining the request for proposal (RFP).

The RFP must outline the design and construction requirements for the propulsion system, including any component(s); the proposed delivery date and location for delivery; the form and formula for contract security; a copy of the proposed contract; and the deadline for receipt of the proposal.

Any proposal submitted shall constitute an offer and remain open until 90 days after the deadline for submitting proposals and must be accompanied by a bid deposit (cash, certified check, cashier's check, or surety bond) in the amount of 5 percent of the proposed contract price. If a contract is awarded and the selected firm fails to enter into a contract and furnish the required security within 20 days, the bid deposit is forfeited and deposited in the Puget Sound construction account.

The department, using criteria it develops, will evaluate proposals received for: (1) compliance with the RFP specifications; and (2) for suitability of each firm's proposal by applying appropriate criteria to be developed by the department to (a) assess the ability of the firm to

expeditiously and satisfactorily perform, and (b) to accomplish an acquisition that is most advantageous to the department.

Weighted cost and operational criteria used to select the most advantageous diesel engine are delineated.

Upon concluding its evaluation, the DOT will select the firm presenting the proposal most advantageous to the department and rank the remaining firms in order of preference; or reject all proposals not in compliance with the RFP.

Upon selecting the firm with the most advantageous proposal and ranking the remaining firms, the department must negotiate a contract. If an agreement cannot be negotiated, the department may negotiate with the firm ranked next highest and may repeat this procedure until the list of firms is exhausted.

Firms not selected will receive immediate notification. The department's decision shall be conclusive unless appealed by an aggrieved firm to Thurston County Superior Court. Appeals are heard on the administrative record. The court may affirm the department's decision or reverse if it finds the action of the department is arbitrary and capricious.

The DOT, Department of General Administration (GA), and the Office of Financial Management (OFM), in consultation with the Legislative Transportation Committee (LTC), are required to review current procurement statutes and the consequent impact on the operation of Washington State Ferries (WSF) as a public mass transportation system. The results of the review are to be reported to the Governor and the House and Senate Transportation Committees on or before January 1, 1995.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The timely award of a contract for the engine component of the propulsion system for the three Jumbo Mark II ferries is necessary to keep the construction project on line, for delivery of the first vessel in 1996.

Current procurement procedures required under competitive bid statutes do not consider operational criteria such as reliability, maintainability and performance in the bid evaluation process. These criteria are essential to the selection of equipment and parts used in public mass

transportation and in determining if the state is receiving the best product.

Testimony Against: The DOT should follow current procurement procedures using competitive bid statutes that provide for life-cycle cost analysis. The goal of the competitive bid process is to get the best product at the least cost to the state. The special procurement process proposed under this legislation promotes favoritism in the engine selection process.

Witnesses: Terry McCarthy, Washington State Ferries (pro); Bert Bennett, Washington State Ferries (pro); Vern Patterson, NC Power Systems (con); Charles Garman, Wartsila Diesel (con); Bob Wahlfeld, Caterpillar (con); Randy Ray, Todd Pacific Shipyards (pro); and Roland Webb, Todd Pacific Shipyards (pro).