

SENATE BILL REPORT

SB 5548

AS OF FEBRUARY 18, 1993

Brief Description: Purchasing jumbo ferries.

SPONSORS: Senators Sheldon, Sellar, Vognild, Haugen, Spanel, Anderson, McAuliffe, Moore, West, Franklin, Wojahn, von Reichbauer, Roach, Skratek, Pelz, Winsley, Oke, Talmadge, Prentice, Jesernig, Nelson, Erwin, Drew, Hargrove, Bauer, Owen and Quigley

SENATE COMMITTEE ON TRANSPORTATION

Staff: Vicki Fabre (786-7313)

Hearing Dates: February 18, 1993

BACKGROUND

Due to current and projected demands for transportation across Puget Sound, Washington State has decided to construct three new jumbo ferries (216 cars, 2500 passengers) beginning in the 1993-95 biennium. The 1991-93 transportation budget contained \$1.1 million for the design of a jumbo class ferry. Total cost of construction for the three ferries is estimated to be approximately \$216 million. The new jumbo ferries will be financed in part with \$210 million generated from bond sales authorized by the 1992 Legislature. From the bond authorization, the Legislature has appropriated \$10 million for long-lead time propulsion equipment. Repayment of the bonds will be accomplished from existing revenues from the motor vehicle excise tax and the motor vehicle fuel tax. If the 1993 Legislature appropriates the necessary funds, under the design and construction schedule established by the Department of Transportation (DOT), delivery of the first vessel could occur in July, 1995.

Current law governing public contracting procedures establishes a competitive comprehensive bidding process which awards contracts to the lowest qualified bidder. In the last decade the number of shipyards in Puget Sound qualified to bid on and perform major overhauls on state ferries and new construction has decreased. The decline of the shipyard industry is due to a combination of economic pressures and state regulatory requirements. During the 1992 legislative session and interim, the DOT, ferry labor unions and local shipyard representatives examined ways to increase the possibility of in-state construction of the proposed jumbo ferries and improve and enhance competition among Washington yards.

The 1992 supplemental transportation budget contained language requiring that the construction and assembly of the new vessels occur within Washington. Because, by law, this budget

proviso expires in June, 1993, this issue needs to be reexamined when the Legislature considers authorizing additional bond sales during the 1993 session.

In 1977 the Legislature statutorily authorized construction of additional ferries. Under the statute, the builder was selected through a competitive bidding procedure which included an in-state preference provision. The statute established a preference for shipbuilding firms located in Washington, provided the bid of the Washington firm did not exceed by more than 6 percent the lowest price proposal for a negotiated contract.

Although the in-state preference provision was contested by an unsuccessful out-of-state firm as being discriminatory and unconstitutional, the Washington Supreme Court upheld the preferential treatment on the basis that it had a rational economic basis and was not in violation of the Constitution.

SUMMARY

Upon legislative authorization to purchase one or more jumbo ferry vessels, the Department of Transportation (DOT) is required to publish notice of its intent in at least one state trade paper and one other paper of general circulation. The notice must contain information about: (1) the number of vessels to be purchased and the proposed delivery date; (2) bidder prequalification requirements; and (3) an address and telephone number to obtain the request for proposal.

The DOT is required to send to any requesting firm its bidding documents specifying the criteria for the jumbo ferry vessels. Bid documents must include information on the following: (1) solicitation of a bid to deliver vessels that are constructed according to DOT plans and specifications; (2) the number of vessels to be purchased and delivery requirements; (3) the amount of the contractor's bond; (4) a copy of the vessel construction contract; (5) the final date for receiving bids; (6) a requirement that the contractor comply with applicable state laws; and (7) a requirement that vessels, excluding equipment provided by the state, be constructed within state boundaries and that all warranty work be performed within the state.

All proposals remain open for 90 days and must be accompanied by a deposit in an amount equal to 5 percent of the amount of the proposed contract price.

The DOT, upon concluding its evaluation of the bid proposals, may select the firm submitting the lowest responsible bid, or reject all bids not in compliance with the bid document requirements.

Upon selecting the lowest responsible bidder and ranking the remaining firms in preferential order, the DOT must sign a contract with the selected firm. If agreement cannot be reached, DOT may contract with the firm ranked next lowest bidder and, if necessary, may repeat this procedure until the

list of firms is exhausted. If a contract is awarded and the selected firm fails to enter into a contract and furnish a performance bond within 20 days, its bid bond deposit is forfeited and deposited in the Puget Sound capital construction account.

Firms that are not selected must be notified immediately. The DOT's selection is conclusive unless appealed within five days after notice of the final decision. An appeal must be heard within ten days and on five days notice to the DOT. Appeals are heard on the administrative record. The court may affirm the DOT's decision or reverse if it finds the action of the department was arbitrary or capricious.

Appropriation:

Revenue:

Fiscal Note: requested