

SENATE BILL REPORT

SB 6501

AS OF FEBRUARY 2, 1994

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

SPONSORS: Senators Sheldon, Drew, Oke, Prince and Prentice

SENATE COMMITTEE ON TRANSPORTATION

Staff: Vicki Fabre (786-7313)

Hearing Dates: February 2, 1994

BACKGROUND:

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 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, 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 has been expended in design work associated with the propulsion plant.

The Legislature has determined that state agencies shall use competitive bidding procedures administered by the State Department of General Administration, Office of State Procurement (OSP) when contracting for goods and services and has likewise mandated that there shall be a consideration of life-cycle costing 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 does not lend itself to the realities of public transportation; and (2) it is necessary to have equipment in the new Jumbo ferries that has commonality, is interchangeable

with equipment in other vessels in the fleet and that is familiar to fleet crews.

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 state procurement life-cycle costing requirements. The court said that "where the state is purchasing equipment, the operation of which will cost many times more than the original purchase, the state must undertake an analysis to determine that life-cycle costing would not result in the lowest total cost to the state." If public transportation is not subject to life-cycle cost analysis, there must be some analysis to so indicate, or the Legislature must grant an exemption from the life-cycle cost requirement.

Subsequent to the court's oral order the parties to the suit, and Siemens as an intervenor, agreed in a stipulated order to remove the diesel engines component from the Siemen's contract. Additionally, in the absence of future legislative action exempting the rebid of the engines component from life-cycle cost analysis, the court required OSP to use such analysis.

The Department of Transportation maintains that the construction of the new Jumbo Mark II ferries is critical to the welfare of the state and that delay in the immediate construction of such 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:

The State Department of Transportation 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 obtaining or installing the propulsion system or any of its components as incidental to the jumbo construction contract currently authorized; nor from proceeding to complete any existing contract for acquisition of the propulsion system.

The department is required to publish a notice of its intent to negotiate a contract, once a week, for at least two consecutive weeks in one trade paper and one other paper of general circulation. 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 (in 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.

Upon concluding its evaluation, the department 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 within five days after notice of the final decision. An appeal must be heard within ten days and on five days notice to the department. 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.

Appropriation: none

Revenue: none

Fiscal Note: requested

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

