

HOUSE BILL REPORT

SSB 6853

As Reported by House Committee On:
Transportation

Title: An act relating to vessel procurement.

Brief Description: Modifying vessel procurement provisions for design-build ferries.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Haugen and Benson; by request of Department of Transportation).

Brief History:

Committee Activity:

Transportation: 2/21/06, 2/27/06 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- Modifies the provisions related to ferry vessel procurement through a design-build process to allow for the selection of the best and final proposal rather than the lowest bid from a responsive and responsible proposer.
- The determination of the best and final proposal is based on both the price and a variety of criteria regarding the proposal and the proposer.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended. Signed by 19 members: Representatives Murray, Chair; Wallace, Vice Chair; Woods, Ranking Minority Member; Appleton, Clibborn, Dickerson, Hankins, Hudgins, Jarrett, Lovick, Morris, Nixon, Rodne, Sells, Shabro, Simpson, B. Sullivan, Upthegrove and Wood.

Minority Report: Do not pass. Signed by 8 members: Representatives Buck, Campbell, Ericksen, Flannigan, Holmquist, Kilmer, Schindler and Takko.

Staff: David Munnecke (786-7315).

Background:

The design-build ferry procurement process is divided into three phases. In order to commence the utilization of the process, the Department of Transportation (DOT) publishes a notice of intent to issue a request for proposals (RFP).

In phase one, the DOT evaluates and selects pre-qualified proposers to participate in development of technical proposals. The DOT rules outline pre-qualification requirements which include both a technical and financial test. In phase two, qualified proposers prepare technical proposals in consultation with the DOT, sufficient to generate a firm, fixed price bid to the DOT. Phase three includes the submission and evaluation of bids, award of the contract, and design and construction of the auto ferries.

In order to be considered, bids must conform with the technical proposals submitted in phase two and proposers must have qualified through phase two. The DOT may select the lowest total bid price and award the contract or reject any or all of the bids, republish the RFP, or revise or cancel the RFP. If the DOT is unable to enter into a contract with the successful bidder, the DOT may award the contract to the next lowest bidder and so on until the list of proposers is exhausted. The DOT may provide an honorarium to reimburse each unsuccessful phase three proposer for a portion of its technical proposal preparation costs.

Summary of Amended Bill:

Phase two of the proposal process requires the development of a proposal price. The goal of the review of the selected proposers' designs, drawings and specifications is indicated as assisting the development of technical proposals for evaluation as part of the best and final proposal process that occurs in phase three of the process. The DOT's review of the proposers' technical proposal as part of the best and final proposal process is not to replace the builder's responsibility to meet the requirements of the RFP.

Phase three involves a "best and final" proposal selection process. The "best and final" process is a scored evaluation process which considers price and other evaluation factors and results in the selection of the highest scoring proposal. The factors, weighting, and process used to score the proposals must be identified in the RFP. The DOT may amend the RFP to add factors if the process is already underway.

Factors may include, but are not limited to:

- quality and responsiveness of the technical proposal;
- price;
- ability, capacity, and skill of the proposer's project team and other key personnel to perform the contract;
- the integrity, reputation, experience, and efficiency of the proposer;
- design capability;
- build strategy;
- location and quality of the shipyard facilities intended for performance of the contract;
- ability to meet the vessel delivery dates;
- recent, current, and projected work load;
- experience and quality of performance on previous contracts;
- recent and current compliance with laws relating to ship construction and repair;
- objective, measurable criteria as may be defined in the request for proposal; and

- such other information as may be secured having a bearing on the decision to award the contract.

The DOT must negotiate with the submitting firm with the highest score. If it is unable to execute a contract with that firm, the DOT may negotiate with the next highest scoring bidder, and so on until a contract agreement is reached or the process is terminated.

The DOT must use an independent panel of four to six experts to provide oversight and make recommendations to DOT on the implementation of phases two and three. The panel members are selected cooperatively by the Joint Transportation Committee and the Governor and must be recognized experts in the fields of vessel procurement, vessel financing, and legal issues related to vessel procurement.

Amended Bill Compared to Substitute Bill:

The amended bill requires the use of an independent panel of experts to oversee the design-build vessel procurement process, rather than giving the DOT discretion regarding the use of the panel. It also requires the Joint Transportation Committee and the Governor to cooperatively select the members of the panel who must be recognized experts in the fields of vessel procurement, vessel financing, and legal issues related to vessel procurement.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The Office of Financial Management recommended the best-value approach for ferry vessel procurement. Under current law, the contract is chosen based on the lowest bid.

The best value approach has already been used by the DOT in highway construction. It is used across the country in a variety of circumstances. In this context, it would allow for the most appropriate selection among the three boats rather than requiring that the choice be based on the lowest price. Price is only one factor, and the DOT must be able to look at more issues. The scoring process is subjective but it is not random or arbitrary.

We don't believe we will end up with a single bidder for the contract. There will be appeals of the process, but there is a thorough description of the boats. The description will be met in a variety of ways, and life cycle issues will be addressed. We will look at hull design and passenger configuration as part of the best value determination. The winning bidder must be eligible and responsive.

The objective is to get the boat built. The program has not been transparent, but now the expert review panel will be involved at every step, as a proxy for the public. This will remove the bias issue and ensure a correct and independent choice. The Public Records Act will

apply, but the Public Meetings Act will not, which is why the expert review panel is so important. The DOT should be required to use the expert review panel, and it should include experts in vessel procurement, vessel financing, and the legal issues related to vessel procurement.

Todd Shipyards has a thousand employees and experience in ferry building. We built both generations of jumbo ferries, and we are prepared to move forward under either approach. Best value procurement has already been used for propulsion systems and the last generation of passenger-only ferries. Best value contracts are common and are used by the Navy, Coast Guard, and NOAA for maintenance contracts. Best-value often leads to the best price. Low bid leads to change orders and litigation.

Testimony Against: The low bid requirement may be a problem, but the final proposals must meet the requirements of the request for proposals, and the risk is with the shipyard. Martinac has met the requirements of the Washington State Ferries requests for proposals. We need to start building these ferries now, and we need to do so under current law.

Persons Testifying: (In Support) Doug McDonald, Washington State Department of Transportation; Steve Welch and Randy Ray, Todd Shipyard; and Bill Alkine, Nichols Brother Boat Builders.

(Opposed) Jonathan Platt, J. Martinac Shipbuilders.

Persons Signed In To Testify But Not Testifying: None.