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**SUBSTITUTE SENATE BILL 6853**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** Senate Committee on Transportation (originally sponsored by Senators Haugen and Benson; by request of Department of Transportation)

READ FIRST TIME 02/07/06.

1 AN ACT Relating to vessel procurement; amending RCW 47.60.818 and  
2 47.60.820; and adding new sections to chapter 47.60 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 47.60 RCW  
5 to read as follows:

6 The 2001 legislature found that a contracting procedure that  
7 facilitates construction of transportation facilities in a more timely  
8 manner may occasionally be necessary to ensure that construction can  
9 proceed simultaneously with the design of the facility. The  
10 legislature further found that the design-build process and other  
11 alternative project delivery concepts achieve the goals of time savings  
12 and avoidance of costly change orders.

13 The audit, conducted by Talbot, Korvola & Warwick in 2001, of the  
14 state ferries' capital program resulted in a recommendation for  
15 improvements and changes in ferry procurement processes. The auditors  
16 recommended that ferries be procured through use of a modified request  
17 for proposals process whereby the prevailing shipbuilder and Washington  
18 state ferries engage in a design and build partnership. This process  
19 promotes ownership of the design by the shipbuilder while using the

1 department of transportation's expertise in ferry design and  
2 operations. Alternative processes like design-build partnerships  
3 promote innovation and create competitive incentives that increase the  
4 likelihood of finishing projects on time and within the budget.

5 The purpose of this 2006 act is to modify the request for proposals  
6 process for procurement of ferries, authorize the use of best value  
7 determinations, and to prescribe appropriate requirements and criteria  
8 to ensure that contracting procedures serve the public interest.

9 **Sec. 2.** RCW 47.60.818 and 2001 c 226 s 8 are each amended to read  
10 as follows:

11 Phase two of the request for proposals process consists of  
12 preparation of technical proposals (~~((in consultation with the~~  
13 ~~department))~~), as follows:

14 (1) The development of technical proposals in compliance with the  
15 detailed instructions provided in the request for proposals, including  
16 the outline specifications, and any addenda to them. Technical  
17 proposals must include the following:

18 (a) Design and specifications sufficient to fully depict the  
19 ferries' characteristics and identify installed equipment;

20 (b) Drawings showing arrangements of equipment and details  
21 necessary for the proposer to develop a (~~(firm, fixed)~~) proposal price  
22 bid;

23 (c) Project schedule including vessel delivery dates; and

24 (d) Other appropriate items.

25 (2) The department shall conduct periodic reviews with each of the  
26 selected proposers to consider and critique their designs, drawings,  
27 and specifications. (~~((These reviews must be held to ensure that~~  
28 ~~technical proposals meet the department's requirements and are~~  
29 ~~responsive to the critiques conducted by the department during the~~  
30 ~~development of technical proposals.))~~ The goal of the reviews is to  
31 assist the selected proposers in the development of technical proposals  
32 for evaluation as part of the best and final proposal process in RCW  
33 47.60.820. The department's review shall not replace the builder's  
34 responsibility to meet the requirements of the request for proposals.

35 (3) If, as a result of the periodic technical reviews or otherwise,  
36 the department determines that it is in the best interests of the

1 department to modify any element of the request for proposals,  
2 including the outline specifications, it shall do so by written addenda  
3 to the request for proposals.

4 (4) Proposers' ~~((must submit final))~~ technical proposals ~~((for~~  
5 ~~approval that))~~ must include design, drawings, and specifications at a  
6 sufficient level of detail to fully depict the ferries' characteristics  
7 and identify installed equipment, and to enable a proposer to ~~((deliver~~  
8 ~~a firm, fixed price bid to the department. The department shall reject~~  
9 ~~final technical proposals that modify, fail to conform to, or are not~~  
10 ~~fully responsive to and in compliance with the requirements of the~~  
11 ~~request for proposals, including the outline specifications, as amended~~  
12 ~~by addenda))~~ develop a proposal price.

13 **Sec. 3.** RCW 47.60.820 and 2001 c 226 s 9 are each amended to read  
14 as follows:

15 (1) Phase three consists of the submittal and evaluation of ~~((bids~~  
16 ~~and the award of the contract to the successful proposer for the final~~  
17 ~~design and construction of the auto ferries, as follows:~~

18 (1) ~~The department shall request bids for detailed design and~~  
19 ~~construction of the vessels after completion of the review of technical~~  
20 ~~proposals in phase two. The department will review detailed design~~  
21 ~~drawings in phase three for conformity with the technical proposals~~  
22 ~~submitted in phase two. In no case may the department's review replace~~  
23 ~~the builder's responsibility to deliver a product meeting the phase two~~  
24 ~~technical proposal. The department may only consider bids from~~  
25 ~~selected proposers that have qualified to bid by submitting technical~~  
26 ~~proposals that have been approved by the department.~~

27 (2) ~~Each qualified proposer must submit its total bid price for all~~  
28 ~~vessels, including certification that the bid is based upon its~~  
29 ~~approved technical proposal and the request for proposals.~~

30 (3) ~~Bids constitute an offer and remain open for ninety days from~~  
31 ~~the date of the bid opening. A deposit in cash, certified check,~~  
32 ~~cashier's check, or surety bond in an amount specified in the request~~  
33 ~~for proposals must accompany each bid and no bid may be considered~~  
34 ~~unless the deposit is enclosed.~~

35 (4) ~~The department shall evaluate the submitted bids. Upon~~  
36 ~~completing the bid evaluation, the department may select the responsive~~

1 and responsible proposer that offers the lowest total bid price for all  
2 vessels.

3 ~~(5) The department may waive informalities in the proposal and bid~~  
4 ~~process, accept a bid from the lowest responsive and responsible~~  
5 ~~proposer, reject any or all bids, republish, and revise or cancel the~~  
6 ~~request for proposals to serve the best interests of the department.~~

7 ~~(6) The department may:~~

8 ~~(a) Award the contract to the proposer that has been selected as~~  
9 ~~the responsive and responsible proposer that has submitted the lowest~~  
10 ~~total bid price;~~

11 ~~(b) If a contract cannot be signed with the apparent successful~~  
12 ~~proposer, award the contract to the next lowest responsive and~~  
13 ~~responsible proposer; or~~

14 ~~(c) If necessary, repeat this procedure with each responsive and~~  
15 ~~responsible proposer in order of rank until the list of those proposers~~  
16 ~~has been exhausted)) best and final proposals consisting of: A~~  
17 ~~technical proposal as addressed in RCW 47.60.818; a price proposal; a~~  
18 ~~proposal deposit in an amount to be specified in the request for~~  
19 ~~proposals; and other information as may be specified by the department~~  
20 ~~in the request for proposals.~~

21 (2) The factors for evaluating best and final proposals must be  
22 published in the request for proposals or may be added through an  
23 amendment to a request for proposals that has already been issued.

24 (3) Factors that may be considered in evaluating proposals include,  
25 but are not limited to: (a) Quality and responsiveness of the  
26 technical proposal; (b) price; (c) ability, capacity, and skill of the  
27 proposer's project team and other key personnel to perform the  
28 contract; (d) integrity, reputation, experience, and efficiency of the  
29 proposer; (e) design capability; (f) build strategy; (g) location and  
30 quality of the shipyard facilities intended for performance of the  
31 contract; (h) ability to meet the vessel delivery dates; (i) recent,  
32 current, and projected workload; (j) experience and quality of  
33 performance on previous contracts; (k) recent and current compliance  
34 with laws relating to ship construction and repair; (l) objective,  
35 measurable criteria as may be defined in the request for proposals; and  
36 (m) such other information as may be secured having a bearing on the  
37 decision to award the contract.

1       (4) The department may reject best and final proposals that modify,  
2 fail to conform to, or are not fully responsive to or in compliance  
3 with the request for proposals.

4       (5) Best and final proposals received shall be evaluated and scored  
5 based on the factors, weighting, and process set forth in the request  
6 for proposals or amendments to the request for proposals. The  
7 department shall initiate negotiations with the proposer submitting the  
8 highest scored best and final proposal. If the department is unable to  
9 execute a contract with the proposer submitting the highest scored best  
10 and final proposal, negotiations with that proposer may be terminated,  
11 and the department may proceed to negotiate with the proposer who  
12 submitted the next highest scored best and final proposal. The  
13 department shall continue in accordance with this procedure until a  
14 contract agreement is reached or the selection process is terminated.

15       (6) A deposit in cash, by certified check, by cashier's check, or  
16 by surety bond, in an amount specified in the request for proposals,  
17 must accompany each best and final proposal and a best and final  
18 proposal may not be considered unless the deposit is enclosed.

19       (7) If the department awards a contract to a proposer under this  
20 section, and the proposer fails to enter into the contract (~~and~~  
21 ~~furnish satisfactory contract security as required by chapter 39.08~~  
22 ~~RCW)) within ((~~twenty days from the date of award~~)) the time specified  
23 in the request for proposals, its deposit is forfeited to the state and  
24 will be deposited by the state treasurer to the credit of the Puget  
25 Sound capital construction account. Upon the execution of a ferry  
26 design and construction contract, all proposal deposits will be  
27 returned, unless forfeited as provided in this subsection.~~

28       (8) The department may provide an honorarium to reimburse each  
29 unsuccessful phase three proposer for a portion of its ((~~technical~~))  
30 best and final proposal preparation costs at a preset, fixed amount to  
31 be specified in the request for proposals. If the department rejects  
32 all ((~~bids~~)) proposals, the department may provide the honoraria to all  
33 phase three proposers that submitted ((~~bids~~)) best and final proposals.

34       NEW SECTION. Sec. 4. A new section is added to chapter 47.60 RCW  
35 to read as follows:

36       The department may use an independent panel of experts to provide

1 oversight and make recommendations to the department on the  
2 implementation of the provisions of RCW 47.60.818 and 47.60.820.

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