
SUBSTITUTE HOUSE BILL 2759

State of Washington 63rd Legislature 2014 Regular Session

By House Transportation (originally sponsored by Representatives Seaquist, Smith, Young, Ryu, and Muri)

READ FIRST TIME 02/11/14.

1 AN ACT Relating to modifying certain requirements for ferry vessel
2 construction; amending RCW 47.60.005, 47.60.010, 47.60.810, 47.60.814,
3 47.60.820, and 47.56.030; adding a new section to chapter 47.60 RCW;
4 and repealing RCW 47.56.780.

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

6 **Sec. 1.** RCW 47.60.005 and 2008 c 124 s 1 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Adaptive management" means a systematic process for
11 continually improving management policies and practices by learning
12 from the outcomes of operational programs.

13 (2) "Capital plan" means the state ferry system plan developed by
14 the department as described in RCW 47.06.050(2), reviewed by the
15 commission, and reported to the transportation committees of the
16 legislature by the commission.

17 (3) "Capital project" has the same meaning as used in budget
18 instructions developed by the office of financial management.

1 (4) "Commission" means the transportation commission created in RCW
2 47.01.051.

3 (5) "Improvement project" has the same meaning as in the budget
4 instructions developed by the office of financial management. If the
5 budget instructions do not define improvement project, then it has the
6 same meaning as "program project" in the budget instructions. If a
7 project meets both the improvement project and preservation project
8 definitions in this section it must be defined as an improvement
9 project. New vessel acquisitions must be defined as improvement
10 projects.

11 (6) "Life-cycle cost model" means that portion of a capital asset
12 inventory system which, among other things, is used to estimate future
13 preservation needs.

14 (7) "Maintenance cost" has the same meaning as used in budget
15 instructions developed by the office of financial management.

16 (8) "Preservation project" has the same meaning as used in budget
17 instructions developed by the office of financial management.

18 (9) "Route" means all ferry sailings from one location to another,
19 such as the Seattle to Bainbridge route or the Port Townsend to
20 Keystone route.

21 (10) "Sailing" means an individual ferry sailing for a specific
22 route, such as the 5:00 p.m. sailing from Seattle to Bremerton.

23 (11) "Travel shed" means one or more ferry routes with distinct
24 characteristics as determined by the department.

25 (12) "Best life-cycle value" means the consideration of the total
26 cost to the state to purchase, operate, maintain, and dispose of a
27 specific vessel.

28 (13) "Fixed price contract" means a contract that requires the
29 contractor to deliver a specified project for a set price. Change
30 orders on fixed price contracts are allowable but should be used on a
31 very limited basis.

32 **Sec. 2.** RCW 47.60.010 and 2008 c 122 s 20 are each amended to read
33 as follows:

34 The department is authorized to acquire by lease, charter,
35 contract, purchase, condemnation, or construction, and partly by any or
36 all of such means, and to thereafter operate, improve, and extend, a
37 system of ferries on and crossing Puget Sound and any of its tributary

1 waters and connections thereof, and connecting with the public streets
2 and highways in the state. However, any new vessel planning,
3 construction, purchase, analysis, or design work must be consistent
4 with RCW 47.60.810. The system of ferries shall include such boats,
5 vessels, wharves, docks, approaches, landings, franchises, licenses,
6 and appurtenances as shall be determined by the department to be
7 necessary or desirable for efficient operation of the ferry system and
8 best serve the public. Subject to RCW 47.56.820, the department may in
9 like manner acquire by purchase, condemnation, or construction and
10 include in the ferry system such toll bridges, approaches, and
11 connecting roadways as may be deemed by the department advantageous in
12 channeling traffic to points served by the ferry system. In addition
13 to the powers of acquisition granted by this section, the department is
14 empowered to enter into any contracts, agreements, or leases with any
15 person, firm, or corporation and to thereby provide, on such terms and
16 conditions as it shall determine, for the operation of any ferry or
17 ferries or system thereof, whether acquired by the department or not.

18 The authority of the department to sell and lease back any state
19 ferry, for federal tax purposes only, as authorized by 26 U.S.C., Sec.
20 168(f)(8) is confirmed. Legal title and all incidents of legal title
21 to any ferry sold and leased back (except for the federal tax benefits
22 attributable to the ownership thereof) shall remain in the state of
23 Washington.

24 **Sec. 3.** RCW 47.60.810 and 2001 c 226 s 4 are each amended to read
25 as follows:

26 (1) The department (~~((may purchase new auto ferries through))~~) shall
27 use (~~((of))~~) a modified request for proposals process when purchasing new
28 auto ferries whereby the prevailing shipbuilder and the department
29 engage in a design and build partnership for the design and
30 construction of the auto ferries. The process consists of the three
31 phases described in subsection (~~((+2))~~) (3) of this section.

32 (2) Throughout the three phases described in subsection (3) of this
33 section, the department shall employ an independent owners
34 representative to serve as a third-party intermediary between the
35 department and the proposers. The independent owners representative
36 shall:

1 (a) Serve as the department's primary advocate and communicator
2 with the proposers;

3 (b) Perform project quality oversight;

4 (c) Manage any change order requests; and

5 (d) Ensure that the contract is adhered to and the department's
6 best interests are considered in all decisions.

7 (3) The definitions in this subsection apply throughout RCW
8 47.60.812 through 47.60.822.

9 (a) "Phase one" means the evaluation and selection of proposers to
10 participate in development of technical proposals in phase two.

11 (b) "Phase two" means the preparation of technical proposals by the
12 selected proposers in consultation with the department.

13 (c) "Phase three" means the submittal and evaluation of bids, the
14 award of the contract to the successful proposer, and the design and
15 construction of the auto ferries.

16 **Sec. 4.** RCW 47.60.814 and 2001 c 226 s 6 are each amended to read
17 as follows:

18 Subject to legislative appropriation for the procurement of
19 vessels, the department shall issue a request for proposals to
20 interested parties that must include, at least, the following:

21 (1) Solicitation of a proposal to participate in a design and build
22 partnership with the department to design and construct the auto
23 ferries;

24 (2) Instructions on the prequalification process and procedures;

25 (3) A description of the modified request for proposals process.
26 Under this process, the department may modify any component of the
27 request for proposals, including the outline specifications, by
28 addendum at any time before the submittal of bids in phase three;

29 (4) A description of the design and build partnership process to be
30 used for procurement of the vessels;

31 (5) Outline specifications that provide the requirements for the
32 vessels including, but not limited to, items such as length, beam,
33 displacement, speed, propulsion requirements, capacities for autos and
34 passengers, passenger space characteristics, and crew size. The
35 department will produce notional line drawings depicting hull geometry
36 that will interface with Washington state ferries terminal facilities.

1 Notional lines may be modified in phase two, subject to approval by the
2 department;

3 (6) Instructions for the development of technical proposals in
4 phase two, and information regarding confidentiality of technical
5 proposals;

6 (7) The vessel delivery schedule, identification of the port on
7 Puget Sound where delivery must take place, and the location where
8 acceptance trials must be held;

9 (8) The estimated price range for the contract;

10 (9) Notification that the contract will be a fixed price contract
11 that delivers the best life-cycle value;

12 ~~(10)~~ The form and amount of the required bid deposit and contract
13 security;

14 ~~((+10+))~~ (11) A copy of the contract that will be signed by the
15 successful proposer;

16 ~~((+11+))~~ (12) The date by which proposals in phase one must be
17 received by the department in order to be considered;

18 ~~((+12+))~~ (13) A description of information to be submitted in the
19 proposals in phase one concerning each proposer's qualifications,
20 capabilities, and experience;

21 ~~((+13+))~~ (14) A statement of the maximum number of proposers that
22 may be selected in phase one for development of technical proposals in
23 phase two;

24 ~~((+14+))~~ (15) Criteria that will be used for the phase one
25 selection of proposers to participate in the phase two development of
26 technical proposals;

27 ~~((+15+))~~ (16) A description of the process that will be used for
28 the phase three submittal and evaluation of bids, award of the
29 contract, and postaward administrative activities;

30 ~~((+16+))~~ (17) A requirement that the contractor comply with all
31 applicable laws, rules, and regulations including but not limited to
32 those pertaining to the environment, worker health and safety, and
33 prevailing wages;

34 ~~((+17+))~~ (18) Except as provided in section 5 of this act, a
35 requirement that the vessels be constructed within the boundaries of
36 the state of Washington except that equipment furnished by the state
37 and components, products, and systems that are standard manufactured
38 items are not subject to the in-state requirement under this

1 subsection. For the purposes of this subsection, "constructed" means
2 the fabrication, by the joining together by welding or fastening of all
3 steel parts from which the total vessel is constructed, including, but
4 not limited to, all shell frames, longitudinals, bulkheads, webs,
5 piping runs, wire ways, and ducting. "Constructed" also means the
6 installation of all components and systems, including, but not limited
7 to, equipment and machinery, castings, electrical, electronics, deck
8 covering, lining, paint, and joiner work required by the contract.
9 "Constructed" also means the interconnection of all equipment,
10 machinery, and services, such as piping, wiring, and ducting; (~~and~~
11 ~~(18)~~) (19) A requirement that all vessel design specifications and
12 drawings must be complete and be approved by the United States coast
13 guard before vessel construction begins;
14 (20) A requirement that all vessel design specifications comply
15 with the international convention for the safety of life at sea as
16 administered by the United States coast guard; and
17 (21) A requirement that all warranty work on the vessel must be
18 performed within the boundaries of the state of Washington, insofar as
19 practical.

20 NEW SECTION. Sec. 5. A new section is added to chapter 47.60 RCW
21 to read as follows:

22 If all responses to the initial request for proposals under RCW
23 47.60.814 are greater than five percent above the department's
24 engineer's estimate for the project, the department must reject all
25 proposals and issue a subsequent request for proposals that is not
26 subject to RCW 47.60.814(18).

27 **Sec. 6.** RCW 47.60.820 and 2001 c 226 s 9 are each amended to read
28 as follows:

29 Phase three consists of the submittal and evaluation of bids and
30 the award of the contract to the successful proposer for the final
31 design and construction of the auto ferries, as follows:

32 (1) The department shall request bids for detailed design and
33 construction of the vessels after completion of the review of technical
34 proposals in phase two. The department will review detailed design
35 drawings in phase three for conformity with the technical proposals
36 submitted in phase two. In no case may the department's review replace

1 the builder's responsibility to deliver a product meeting the phase two
2 technical proposal. The department may only consider bids from
3 selected proposers that have qualified to bid by submitting technical
4 proposals that have been approved by the department.

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

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

13 (4) The department shall evaluate the submitted bids. Upon
14 completing the bid evaluation, the department may select the responsive
15 and responsible proposer that offers the lowest total fixed price bid
16 (~~(price)~~) on a best life-cycle value basis for all vessels.

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

21 (6) The department may:

22 (a) Award the contract to the proposer that has been selected as
23 the responsive and responsible proposer that has submitted the lowest
24 total fixed price bid (~~(price)~~) on a best life-cycle value basis;

25 (b) If a contract cannot be signed with the apparent successful
26 proposer, award the contract to the next lowest responsive and
27 responsible proposer; or

28 (c) If necessary, repeat this procedure with each responsive and
29 responsible proposer in order of rank until the list of those proposers
30 has been exhausted.

31 (7) If the department awards a contract to a proposer under this
32 section, and the proposer fails to enter into the contract and furnish
33 satisfactory contract security as required by chapter 39.08 RCW within
34 twenty days from the date of award, its deposit is forfeited to the
35 state and will be deposited by the state treasurer to the credit of the
36 Puget Sound capital construction account. Upon the execution of a
37 ferry design and construction contract all proposal deposits will be
38 returned.

1 (8) The department may provide an honorarium to reimburse each
2 unsuccessful phase three proposer for a portion of its technical
3 proposal preparation costs at a preset, fixed amount to be specified in
4 the request for proposals. If the department rejects all bids, the
5 department may provide the honoraria to all phase three proposers that
6 submitted bids.

7 (9) To accommodate change orders on a fixed price contract, the
8 department shall request that the legislative appropriation for any
9 auto ferry construction project include up to, but no more than, a five
10 percent price contingency. This contingency must be identified in the
11 funding request to the legislature and held in reserve until the office
12 of financial management approves the expenditure. After completion of
13 the project, the department must provide to the contractor half of any
14 remaining amount of the contingency identified in this subsection if
15 the project is completed under the original budget and by the original
16 date of delivery.

17 **Sec. 7.** RCW 47.56.030 and 2008 c 122 s 8 are each amended to read
18 as follows:

19 (1) Except as permitted under chapter 47.29 or 47.46 RCW:

20 (a) Unless otherwise delegated, and subject to RCW 47.56.820, the
21 department of transportation shall have full charge of the planning,
22 analysis, and construction of all toll bridges and other toll
23 facilities including the Washington state ferries, and the operation
24 and maintenance thereof.

25 (b) The transportation commission shall determine and establish the
26 tolls and charges thereon.

27 (c) Unless otherwise delegated, and subject to RCW 47.56.820, the
28 department shall have full charge of planning, analysis, and design of
29 all toll facilities. The department may conduct the planning,
30 analysis, and design of toll facilities as necessary to support the
31 legislature's consideration of toll authorization.

32 (d) The department shall utilize and administer toll collection
33 systems that are simple, unified, and interoperable. To the extent
34 practicable, the department shall avoid the use of toll booths. The
35 department shall set the statewide standards and protocols for all toll
36 facilities within the state, including those authorized by local
37 authorities.

1 (e) Except as provided in this section, the department shall
2 proceed with the construction of such toll bridges and other facilities
3 and the approaches thereto by contract in the manner of state highway
4 construction immediately upon there being made available funds for such
5 work and shall prosecute such work to completion as rapidly as
6 practicable. The department is authorized to negotiate contracts for
7 any amount without bid under (e)(i) and (ii) of this subsection:

8 (i) Emergency contracts, in order to make repairs to ferries or
9 ferry terminal facilities or removal of such facilities whenever
10 continued use of ferries or ferry terminal facilities constitutes a
11 real or immediate danger to the traveling public or precludes prudent
12 use of such ferries or facilities; and

13 (ii) Single source contracts for vessel dry dockings, when there is
14 clearly and legitimately only one available bidder to conduct dry dock-
15 related work for a specific class or classes of vessels. The contracts
16 may be entered into for a single vessel dry docking or for multiple
17 vessel dry dockings for a period not to exceed two years.

18 (f) Any new vessel planning, construction, purchase, analysis, or
19 design work must be consistent with RCW 47.60.810.

20 (2) The department shall proceed with the procurement of materials,
21 supplies, services, and equipment needed for the support, maintenance,
22 and use of a ferry, ferry terminal, or other facility operated by
23 Washington state ferries, in accordance with chapter 43.19 RCW except
24 as follows:

25 (a) When the secretary of the department of transportation
26 determines in writing that the use of invitation for bid is either not
27 practicable or not advantageous to the state and it may be necessary to
28 make competitive evaluations, including technical or performance
29 evaluations among acceptable proposals to complete the contract award,
30 a contract may be entered into by use of a competitive sealed proposals
31 method, and a formal request for proposals solicitation. Such formal
32 request for proposals solicitation shall include a functional
33 description of the needs and requirements of the state and the
34 significant factors.

35 (b) When purchases are made through a formal request for proposals
36 solicitation the contract shall be awarded to the responsible proposer
37 whose competitive sealed proposal is determined in writing to be the
38 most advantageous to the state taking into consideration price and

1 other evaluation factors set forth in the request for proposals. No
2 significant factors may be used in evaluating a proposal that are not
3 specified in the request for proposals. Factors that may be considered
4 in evaluating proposals include but are not limited to: Price;
5 maintainability; reliability; commonality; performance levels; life
6 cycle cost if applicable under this section; cost of transportation or
7 delivery; delivery schedule offered; installation cost; cost of spare
8 parts; availability of parts and service offered; and the following:

9 (i) The ability, capacity, and skill of the proposer to perform the
10 contract or provide the service required;

11 (ii) The character, integrity, reputation, judgment, experience,
12 and efficiency of the proposer;

13 (iii) Whether the proposer can perform the contract within the time
14 specified;

15 (iv) The quality of performance of previous contracts or services;

16 (v) The previous and existing compliance by the proposer with laws
17 relating to the contract or services;

18 (vi) Objective, measurable criteria defined in the request for
19 proposal. These criteria may include but are not limited to items such
20 as discounts, delivery costs, maintenance services costs, installation
21 costs, and transportation costs; and

22 (vii) Such other information as may be secured having a bearing on
23 the decision to award the contract.

24 (c) When purchases are made through a request for proposal process,
25 proposals received shall be evaluated based on the evaluation factors
26 set forth in the request for proposal. When issuing a request for
27 proposal for the procurement of propulsion equipment or systems that
28 include an engine, the request for proposal must specify the use of a
29 life cycle cost analysis that includes an evaluation of fuel
30 efficiency. When a life cycle cost analysis is used, the life cycle
31 cost of a proposal shall be given at least the same relative importance
32 as the initial price element specified in the request of proposal
33 documents. The department may reject any and all proposals received.
34 If the proposals are not rejected, the award shall be made to the
35 proposer whose proposal is most advantageous to the department,
36 considering price and the other evaluation factors set forth in the
37 request for proposal.

1 NEW SECTION. **Sec. 8.** RCW 47.56.780 (New ferry vessel construction
2 for service on routes that require a vessel that carries no more than
3 one hundred motor vehicles--How constructed--Warranty work) and 2008 c
4 4 s 2 are each repealed.

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