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## Transportation Committee

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### HB 1502

**Brief Description:** Concerning the procurement and design of electric ferries by counties.

**Sponsors:** Representatives Wylie, Griffey, Ramel, Paul, Lekanoff, Berry, Ortiz-Self, Hackney, Harris-Talley and Pollet.

#### Brief Summary of Bill

- Permits counties to use additional competitive bidding procedures for procurement and design of electric ferries.
- Permits a county procuring an electric ferry to consider best value criteria in determining the lowest responsive and responsible bidder.
- Exempts from public disclosure trade secrets or other proprietary information submitted by a bidder in connection with electric ferry procurement if the bidder specifically states in writing the reason for protection from disclosure and the county agrees that such protection is necessary.
- Permits a county procuring an electric ferry to identify specific equipment and vendors without allowing substitutions, when such equipment selections will reduce cost and performance risk.

**Hearing Date:** 2/16/21

**Staff:** Beth Redfield (786-7140).

#### Background:

Generally, public agencies, including counties, are required to contract on a competitive basis for public works and award the contract to the lowest responsible bidder.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Before the award of a public works contract, a bidder must meet responsibility criteria to be qualified to be awarded a public works project. The bidder must:

- be a registered contractor;
- have a current state unified business identifier number;
- have applicable industrial insurance coverage, an Employment Security Department number, and a state excise tax registration number;
- not be disqualified from bidding due to previous non-compliance with registration or prevailing wage requirements;
- not have been found out of compliance with apprenticeship utilization requirements, if subject to those requirements;
- have received training on prevailing wage requirements; and
- have no findings of violation of wage payment laws in the previous three years.

The awarding agency or jurisdiction may adopt supplemental criteria for determining bidder responsibility. The supplemental criteria, the basis for evaluation against that criteria, and deadlines for appeal must be provided in the invitation to bid or bidding documents.

Generally public agencies, including local jurisdictions, are required to have the approval of the Capital Project Advisory Review Board before pursuing the alternative contracting procedures known as design-build and general contractor/construction manager, which allow selection of a contractor based on factors other than low bid.

"Competitive negotiation" is permitted for public agencies when contracting for electronic data processing and telecommunication systems. This process allows the selection of the bidder whose proposal is the most advantageous to the project sponsor based on price and other factors.

The Public Records Act requires state and local agencies to make their written records available to the public for inspection and copying upon request unless the information fits into one of the various specific exemptions under the act. Financial information supplied in a bid or proposal for state ferry or highway construction or as part of alternative public contracting procedures is exempt from disclosure.

### **Summary of Bill:**

A county is permitted to use additional competitive bidding procedures for procurement and design of electric ferries.

After bids are submitted, a county may:

- reject all bids and rebid or cancel the competitive solicitation;
- request best and final offers from responsive and responsible bidders;
- award the purchase or contract to the lowest responsive and responsible bidder;
- award one or more contracts from a competitive solicitation; and
- enter into negotiations with the lowest responsive bidder to determine if a bid may be

improved.

The determination of a responsible bidder must consider:

- the ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- the character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- the bidder's ability to perform the contract within the time specified;
- the quality of performance on previous contracts;
- compliance by the bidder with laws relating to the contract or services;
- any bidder violations of wage payment in the last three years; and
- other information which may have bearing on the decision to award the contract.

Due to the unique aspects of electric ferry design and the importance of well-integrated ship and shore equipment, the county may consider best value criteria in determining the lowest responsive and responsible bidder:

- the needs of the county as specified in the solicitation documents;
- diverse contractor participation;
- competitive pricing, economies, and efficiencies;
- human health and environmental impacts;
- appropriate weighting of cost and non-cost considerations;
- life-cycle cost;
- project manager capabilities, including subcontractor management;
- proposed approach to overall project plan, including integration, acceptance and testing; and
- demonstrated contractor and subcontractor technical knowledge/capabilities to meet technical elements of the design specified in the bid documents.

The bid solicitation must clearly set forth the requirements and criteria that the contract will apply in evaluating bid submissions.

Trade secrets or other proprietary information submitted by a bidder in connection with electric ferry design and procurement are exempt from public disclosure if the bidder specifically states in writing the reason for protection from disclosure and identifies the data to be protected and the county agrees that such protection is necessary. All documents are exempted from disclosure until the bid award is made or the selection process is terminated.

Where critical equipment selections can be made to reduce cost and performance risk, the solicitation may identify specific equipment and vendors, without allowing substitutions.

A county may designate a public works department as the lead agency for the design and procurement of electric ferries.

**Appropriation:** None.

**Fiscal Note:** Available.

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