

# HOUSE BILL REPORT

## SHB 1502

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### As Passed Legislature

**Title:** An act relating to the procurement and design of electric ferries by counties.

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

**Sponsors:** House Committee on Transportation (originally sponsored by Representatives Wylie, Griffey, Ramel, Paul, Lekanoff, Berry, Ortiz-Self, Hackney, Harris-Talley and Pollet).

### Brief History:

#### Committee Activity:

Transportation: 2/16/21, 2/22/21 [DPS].

#### Floor Activity:

Passed House: 2/26/21, 93-3.

Passed Senate: 4/11/21, 48-0.

Passed Legislature.

### Brief Summary of Substitute 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.
- Requires the Washington State Department of Transportation's Office of

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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.*

Equal Opportunity to establish contract goals for county electric ferry vessel procurement in order to increase small business participation in ferry vessel procurement.

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Barkis, Ranking Minority Member; Eslick, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry, Chapman, Dent, Duerr, Entenman, Goehner, Griffey, Hackney, Klicker, Lovick, McCaslin, Orcutt, Paul, Ramel, Riccelli, Slatter, Sutherland, Taylor, Valdez, Walsh and Wicks.

**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.

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 noncompliance 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 Substitute 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 and 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.

To increase small business participation in ferry vessel procurement, the Washington State Department of Transportation's Office of Equal Opportunity must establish contract goals for county electric ferry vessel procurement. The contract goal is defined as a percentage of the contract award amount that the prime contractor must meet by subcontracting with small business enterprises. Small business enterprises intending to benefit from the program must have 50 or fewer employees or gross revenues less than \$7 million or be certified by the Office of Minority and Women's Business Enterprises.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Skagit County needs this to move forward with an electric charging station for an electric ferry which will go to bid soon with construction starting in 2022. There should not be artificial barriers to doing the right thing. A real commitment has been made to electrifying our Puget Sound ferry fleet. There are four counties that operate ferries (Skagit, Whatcom, Pierce, and Wahkiakum) and this will make it easier for them to move into the

future and keep to their schedule. The Skagit County Commission supports this bill. The bill contains a public records exemption which is typical of other bidding exemptions in the Revised Code of Washington. Skagit County is planning for a new electric ferry for service between Anacortes and Guemes Island, with construction planned for 2022. Different procurement options available have been discussed and none really fit the need like the approach outlined in the bill. For this particular project, design-build is not feasible. A naval architect and marine engineer were hired early on to conduct feasibility and design studies. Contracting directly with them allows more control over design and integration. Many shipbuilders no longer have this service in-house, resulting in a markup to the customer in many cases. The traditional low-bid method can mean high change orders, but typically works well for road projects. However, building an electric ferry is significantly more complex than paving roads. The project requires the integration of specialized battery electric propulsion systems and onshore charging infrastructure. Therefore, more flexibility to fully integrate systems and provide better operational reliability is needed. The ability to heavily weigh cost and also evaluate non-cost and best value criteria may better serve public interests and reduce cost and performance risk. Skagit County is the first county in Washington to build an all-electric passenger ferry. Whatcom County is also in the process of a design-build replacement of the Lummi Chief, which serves Lummi Island. Whatcom County is looking at a diesel-electric vessel, but the community would like a fully electric ferry. Anything that gives flexibility in the bid process for doing that would be greatly appreciated.

(Opposed) None.

**Persons Testifying:** Representative Wylie, prime sponsor; Jeanne Cushman and Rachel Rowe, Skagit County Public Works Department; and Tom Donovan, Whatcom County Council.

**Persons Signed In To Testify But Not Testifying:** None.