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## Transportation Committee

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### HB 1846

**Brief Description:** Addressing vessel procurement at the Washington state ferries.

**Sponsors:** Representatives Fey, Barkis, Lekanoff, Ramel, Hutchins, Tharinger and Caldier.

#### Brief Summary of Bill

- Requires the Washington State Department of Transportation (WSDOT) to contract for up to five new hybrid diesel-electric vessels that can carry up to 144 vehicles, using a one or two contract procurement approach to potentially accelerate vessel delivery.
- Requires that the contract(s) must be for a minimum of two vessels, with options for up to five vessels.
- Exempts the procurement from the existing ferries-specific design-build statutes.
- Specifies the WSDOT must establish and apply evaluation criteria beyond low price to meet other best value and highest scored proposal objectives.
- Requires the WSDOT to apply best value evaluation criteria such as: (1) a credit of between five percent and 10 percent of the bid price for bid proposals for vessels constructed in the State of Washington; (2) recognition of the additional costs of transport and owner oversight incurred by shipyards located further from Seattle; and (3) meeting state apprenticeship and water pollution control requirements or state or federal equivalents.

**Hearing Date:** 3/20/23

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

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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.*

**Background:**

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

Public agencies are required to have the approval of the Capital Project Advisory Review Board to pursue alternative contracting procedures, such as design-build and general contractor/construction management. These methods of procurement allow the contractor to perform more than just the construction of a public works project to include design work, construction support services or construction management. Selection of the contracting firm may be based on factors other than low bid and may include the negotiation of a maximum allowable construction cost.

When purchasing new ferries, the Washington State Department of Transportation (WSDOT) may only use a prescribed design-build process which consists of three phases. Throughout the phases the WSDOT must employ an independent owner's representative to serve as a third-party intermediary to communicate with bidders and the successful proposer, perform project quality oversight, manage change order requests, and ensure contract adherence. Phase one includes the evaluation and selection of prequalified proposers, phase two is the preparation and review of technical design proposals, and phase three is the submission and evaluation of bids. Upon completing the bid evaluation, the WSDOT may select the responsive and responsible proposer that offers the lowest total fixed price bid for all vessels.

The request for proposal (RFP) must include a requirement that the vessels be constructed in Washington State. If all responses to the initial RFP are greater than 5 percent above the engineer's estimate for the project, the WSDOT must reject all proposals and issue a subsequent RFP not subject to the build in Washington requirement.

The 2022 Supplemental Transportation Appropriations Act directed the Joint Legislative Audit and Review Committee (JLARC) to conduct an independent review of the Washington State Ferry system's design-build contracting process for hybrid-electric vessels and to recommend best practices and updates to existing statutes to implement the recommendations. The review was also required to evaluate opportunities in the contracting process to decrease vessel construction costs and ensure operational efficiencies.

The JLARC preliminary report recommended that the Legislature should consider revising state law to allow alternatives that increase ferry acquisition speed and value to the state. In particular, JLARC noted that currently Washington State Ferries (WSF) must select the vessel contractor based on low bid, rather than use a best value approach which allows the consideration of other factors beneficial to the state. The JLARC also notes that state law does not allow the WSF to use faster procurement approaches that still encourage in-state construction. The JLARC found that at least 12 states offer in-state preferences and apply those preference during bid selection, rather than after a lengthy technical design proposal process.

## **Summary of Bill:**

The WSDOT is required to contract for up to five new hybrid diesel-electric vessels that can carry up to 144 vehicles, using a one or two contract procurement approach to potentially accelerate vessel delivery. The WSDOT shall make available the design for the 144 vehicle hybrid electric Olympic class vessel to potential bidders. Incentives may be awarded by the WSDOT to bidders who offer design modifications that lower the minimum number of crew needed to staff the vessel in accordance with US Coast Guard requirements; incorporate materials, technologies or other features that lower life-cycle maintenance and operations costs; accelerate the proposed delivery schedule; or make other improvements determined to be beneficial by the WSDOT. The WSDOT may allow for exceptions to the 144 vehicle capacity in cases where efficiencies are met which lower staff requirements or life-cycle costs.

The contract(s) must be for a minimum of two vessels, with options for up to five vessels, and are exempt from the ferries-specific design-build procurement statutes. The contract(s) may employ the following procurement methods: design-build as authorized in the general alternative procurement statutes, design-bid-build, or lease with an option to buy. The terms of a lease plan must be approved by the Governor and the appropriate committees of the Legislature and are subject to the availability of amounts appropriated for this specific purpose.

To the extent possible, the WSDOT must establish and apply evaluation criteria beyond low price to meet other best value and highest scored proposal objectives, which may include:

- a credit of between 5 percent and 10 percent of the bid price for bid proposals from shipyards constructed in the State of Washington and the credit must reflect the amount of loss to the State of Washington from awarding the contract to a shipyard out of state;
- recognition of the additional costs of transport and owner oversight potentially incurred for construction of shipyards at a greater distance from Seattle;
- meeting state apprenticeship utilization requirements, or other state or federal equivalents; and
- meeting state water pollution controls or other state or federal equivalent.

Contracts eligible for the use of federal funds must comply with federal disadvantaged business enterprise targets.

The WSDOT must employ third-party experts that report to the WSF to serve as a supplementary resource. The experts must:

- perform project quality oversight and report on a semi-annual basis to the Legislature and the Office of Financial Management;
- assist with the management of change order requests;
- advise on contract and technical matters; and
- possess knowledge of inland waterways, Puget Sound vessel operations, the propulsion systems of the new vessels and WSF operations.

**Appropriation:** None.

**Fiscal Note:** Requested on March 17, 2023.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.