

SENATE BILL REPORT

EHB 1846

As Passed Senate - Amended, April 14, 2023

Title: An act relating to addressing vessel procurement at the Washington state ferries.

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

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

Brief History: Passed House: 4/11/23, 93-4.

Committee Activity: Transportation: 4/12/23 [DP].

Floor Activity: Passed Senate - Amended: 4/14/23, 47-0.

Brief Summary of Bill (As Amended by Senate)

- 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 that 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 establish a credit of 13 percent of the bid price for ferry vessels constructed in the State of Washington, which must be adjusted to reflect the proportion of the construction that occurs with the state.
- Requires the WSDOT to require that contractors meet state

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apprenticeship and stormwater requirements or other state or federal equivalents, where such equivalents exist.

- Requires contractors located within the state to meet the requirements of the small business enterprise enforceable goals and modifies that program to develop contractual remedies in the absence of good faith efforts by a contractor.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass.

Signed by Senators Lias, Chair; Lovick, Vice Chair; Shewmake, Vice Chair; King, Ranking Member; Holy, Assistant Ranking Member; Cleveland, Fortunato, Kauffman, Lovelett, MacEwen, Nobles, Padden, Randall, Valdez, Wilson, C. and Wilson, J..

Staff: Jenna Forty (786-7755)

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, including 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 (Build in Washington). 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 Ferries (WSF) system's design-build contracting process for hybridelectric 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, the JLARC noted that currently 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 noted 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 preferences during bid selection, rather than after a lengthy technical design proposal process.

To increase small business participation in ferry vessel procurement, the WSDOT administers a small business enterprise enforceable goals program. The program establishes enforceable goals for prime contractors to subcontract with small business enterprises. Contract goals are a percentage of the contract award amounts. Prime contractors unable to meet the enforceable goal must submit evidence of good faith efforts to meet the contract goals.

Summary of Amended 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 must 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 United States 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 bid to meet other best value and highest scored proposal objectives. The WSDOT must award a credit of 13 percent of the bid price for bid proposals for vessels constructed in the state of Washington, which must be adjusted to reflect the proportion of the construction of the vessels which occurs within the state. This credit reflects the amount of economic and revenue loss to the state of Washington from constructing vessels outside the state of Washington and the additional costs of transport, potential delay, and owner oversight incurred for construction at shipyards located outside the state of Washington.

The WSDOT must require that contractors meet state apprenticeship requirements or other state or federal equivalents, where such equivalents exist. The WSDOT must also require that contractors meet state stormwater requirements or other state or federal equivalents, where such equivalents exist.

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

Contractors located within the state must meet the requirements of the small business enterprise enforceable goals program. The WSDOT must develop contractual remedies in the absence of good faith efforts by a contractor and participating small businesses must be certified by the Office of Minority and Women's Business Enterprises.

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 the WSF operations.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: No public hearing was held.

Persons Testifying: N/A

Persons Signed In To Testify But Not Testifying: N/A