
ENGROSSED HOUSE BILL 1846

State of Washington

68th Legislature

2023 Regular Session

By Representatives Fey, Barkis, Lekanoff, Ramel, Hutchins, Tharinger, and Caldier

Read first time 03/17/23. Referred to Committee on Transportation.

1 AN ACT Relating to addressing vessel procurement at the
2 Washington state ferries; amending RCW 47.60.810, 47.60.835,
3 47.60.010, and 47.56.030; adding a new section to chapter 47.60 RCW;
4 creating a new section; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** Washington's marine highways provide vital
7 transportation links between communities. Citizens, businesses, and
8 visitors depend on the state's ferry system to provide safe,
9 dependable auto and passenger service in order to conduct daily life
10 and commerce activities. To maintain the integrity of this vital
11 transportation link and to preserve the everyday conduct of
12 individual and commercial activities, the state must act immediately
13 to procure new hybrid-electric vessels in a timely and efficient
14 manner.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.60
16 RCW to read as follows:

17 (1)(a) The department shall contract for the acquisition of up to
18 five new hybrid diesel-electric ferry vessels that can carry up to
19 144 vehicles, using a one or two contract procurement approach to
20 potentially accelerate vessel delivery.

1 (b) The Washington state ferries shall make available the design
2 for the 144 vehicle hybrid electric Olympic class vessel to potential
3 bidders. Incentives may be awarded by the department to bidders who
4 offer design modifications that:

5 (i) Lower the minimum number of crew needed to staff the vessel
6 in accordance with United States coast guard requirements;

7 (ii) Incorporate materials, technologies, or other features that
8 lower life-cycle maintenance and operations costs;

9 (iii) Accelerate the proposed delivery schedule; or

10 (iv) Make other improvements determined to be beneficial by the
11 department. The Washington state ferries may allow for exceptions of
12 the 144 vehicle capacity of the vessel design in cases where
13 efficiencies outlined in (b)(i) or (ii) of this subsection are met.

14 (2)(a) The contract or contracts must be for a minimum of two
15 vessels, with options for up to five vessels in total, and are exempt
16 from the requirements set forth in RCW 47.60.810 through 47.60.824.

17 (b) The contract or contracts may employ the following
18 procurement methods:

19 (i) Design-build procedure as authorized under chapter 39.10 RCW;

20 (ii) Design-bid-build as authorized under chapter 39.04 RCW or an
21 equivalent process allowed in statute as determined by the
22 department; or

23 (iii) Lease with an option to buy in accordance with RCW
24 47.60.010. The terms of any plan to pursue a lease with an option to
25 buy agreement must be approved by the governor and appropriate
26 committees of the legislature and are subject to the availability of
27 amounts appropriated for this specific purpose.

28 (c) To the extent possible, the department shall establish and
29 apply evaluation criteria beyond low price to meet best value
30 objectives.

31 (d) The department must award a credit of 13 percent of the bid
32 price for bid proposals for vessels constructed in the state of
33 Washington, which must be adjusted to reflect the proportion of the
34 construction of the vessels that occurs within the state. This credit
35 represents the:

36 (i) Amount of economic and revenue loss to the state of
37 Washington from constructing vessels outside the state of Washington,
38 as indicated by the Washington institute for public policy study
39 regarding Washington state ferry vessel procurement dated December
40 2016; and

1 (ii) Additional costs of transport, potential delay, and owner
2 oversight incurred for construction at shipyards located outside the
3 state of Washington.

4 (e) The department must require that contractors meet the
5 requirements of RCW 39.04.320 regarding apprenticeships or other
6 state law or federal law equivalents, where such equivalents exist.

7 (f) The department must require that contractors meet the
8 requirements of chapter 90.48 RCW regarding water pollution control
9 or other state law or federal law equivalents, where such equivalents
10 exist.

11 (3) For contracts eligible for the use of federal funds,
12 contractors must comply with federal disadvantaged business
13 enterprise targets as outlined by the federal agency awarding funds.

14 (4) Contractors located in the state of Washington must meet the
15 requirements of RCW 47.60.835, the small business enterprise
16 enforceable goals program.

17 (5) The department shall employ third-party experts that report
18 to the Washington state ferries to serve as a supplementary resource.
19 The third-party experts contracted by the Washington state ferries
20 shall:

21 (a) Perform project quality oversight and report to the
22 transportation committees of the legislature and the office of
23 financial management on a semiannual basis on project schedule,
24 risks, and project budget;

25 (b) Assist with the management of change order requests;

26 (c) Advise on contract and technical matters; and

27 (d) Possess knowledge of and experience with inland waterways,
28 Puget Sound vessel operations, the propulsion system of the new
29 vessels, and Washington state ferries operations.

30 **Sec. 3.** RCW 47.60.810 and 2019 c 431 s 1 are each amended to
31 read as follows:

32 (1) (~~The~~) Except as otherwise provided in section 2 of this
33 act, the department shall use a modified request for proposals
34 process when purchasing new auto ferries, except for new 144-auto
35 ferries purchased through an option on a contract executed before
36 July 6, 2015, whereby the prevailing shipbuilder and the department
37 engage in a design and build partnership for the design and
38 construction of the auto ferries. The process consists of the three
39 phases described in subsection (3) of this section.

1 (2) Throughout the three phases described in subsection (3) of
2 this section, the department shall employ an independent owner's
3 representative to serve as a third-party intermediary between the
4 department and the proposers, and subsequently the successful
5 proposer. However, this representative shall serve only during the
6 development and construction of the first vessel constructed as part
7 of a new class of vessels developed after July 6, 2015. The
8 independent owner's representative shall:

9 (a) Serve as the department's primary advocate and communicator
10 with the proposers and successful proposer;

11 (b) Perform project quality oversight;

12 (c) Manage any change order requests;

13 (d) Ensure that the contract is adhered to and the department's
14 best interests are considered in all decisions; and

15 (e) Possess knowledge of and experience with inland waterways,
16 Puget Sound vessel operations, the propulsion system of the new
17 vessels, and Washington state ferries operations.

18 (3) The definitions in this subsection apply throughout RCW
19 47.60.812 through 47.60.822.

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

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

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

27 (4) The department may modify an existing option contract
28 executed prior to July 6, 2015, to allow for the purchase of up to
29 five additional 144-auto ferries, for a total of nine 144-auto
30 ferries. The department must execute a new modification to an
31 existing option contract for each of the additional five ferries.

32 **Sec. 4.** RCW 47.60.835 and 2019 c 431 s 2 are each amended to
33 read as follows:

34 (1) (~~To increase small business participation in ferry vessel~~
35 ~~procurement~~)) In the absence of federal funding and the applicability
36 of the disadvantaged business enterprise program, to increase race
37 and gender-neutral participation of small and diverse businesses in
38 ferry procurement, the Washington state department of
39 transportation's office of equal opportunity and civil rights shall

1 develop and monitor a state small business enterprise enforceable
2 goals program. Pursuant to this program, the office shall establish
3 contract goals for ferry vessel procurement. The contract goal is
4 defined as a percentage of the contract award amount that the prime
5 contractor must meet by subcontracting with small business
6 enterprises. The enforceable goal for all ferry vessel procurement
7 contracts will be set by the office. Prime contractors unable to meet
8 the enforceable (~~goal~~) goals must submit evidence of good faith
9 efforts to meet the contract (~~goal~~) goals to the small business
10 enterprise enforceable goals program. The department, in
11 collaboration with the office of equal opportunities and civil rights
12 will develop contractual remedies should the contractor not make good
13 faith efforts.

14 (2) Small business enterprises intending to benefit from the
15 small business enterprise enforceable goals program established in
16 subsection (1) of this section must meet the definition of "small
17 business" in RCW 39.26.010 and must be certified as a "small business
18 enterprise" by the Washington state office of minority and women's
19 business enterprises. Prime contractors will enter all subcontractor
20 payments into the office's diversity management and compliance
21 system. The office of equal opportunity and civil rights shall
22 monitor program performance.

23 **Sec. 5.** RCW 47.60.010 and 2015 3rd sp.s. c 14 s 2 are each
24 amended to read as follows:

25 The department is authorized to acquire by lease, charter,
26 contract, purchase, condemnation, or construction, and partly by any
27 or all of such means, and to thereafter operate, improve, and extend,
28 a system of ferries on and crossing Puget Sound and any of its
29 tributary waters and connections thereof, and connecting with the
30 public streets and highways in the state. However, any new vessel
31 planning, construction, purchase, analysis, or design work must be
32 consistent with RCW 47.60.810, except as otherwise provided in
33 section 2 of this act. The system of ferries shall include such
34 boats, vessels, wharves, docks, approaches, landings, franchises,
35 licenses, and appurtenances as shall be determined by the department
36 to be necessary or desirable for efficient operation of the ferry
37 system and best serve the public. Subject to RCW 47.56.820, the
38 department may in like manner acquire by purchase, condemnation, or
39 construction and include in the ferry system such toll bridges,

1 approaches, and connecting roadways as may be deemed by the
2 department advantageous in channeling traffic to points served by the
3 ferry system. In addition to the powers of acquisition granted by
4 this section, the department is empowered to enter into any
5 contracts, agreements, or leases with any person, firm, or
6 corporation and to thereby provide, on such terms and conditions as
7 it shall determine, for the operation of any ferry or ferries or
8 system thereof, whether acquired by the department or not.

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

15 **Sec. 6.** RCW 47.56.030 and 2015 3rd sp.s. c 14 s 7 are each
16 amended to read as follows:

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

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

23 (b) The transportation commission shall determine and establish
24 the tolls and charges thereon.

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

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

36 (e) Except as provided in this section, the department shall
37 proceed with the construction of such toll bridges and other
38 facilities and the approaches thereto by contract in the manner of
39 state highway construction immediately upon there being made

1 available funds for such work and shall prosecute such work to
2 completion as rapidly as practicable. The department is authorized to
3 negotiate contracts for any amount without bid under (e) (i) and (ii)
4 of this subsection:

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

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

15 (f) Any new vessel planning, construction, purchase, analysis, or
16 design work must be consistent with RCW 47.60.810, except as
17 otherwise provided in section 2 of this act.

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

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

33 (b) When purchases are made through a formal request for
34 proposals solicitation the contract shall be awarded to the
35 responsible proposer whose competitive sealed proposal is determined
36 in writing to be the most advantageous to the state taking into
37 consideration price and other evaluation factors set forth in the
38 request for proposals. No significant factors may be used in
39 evaluating a proposal that are not specified in the request for
40 proposals. Factors that may be considered in evaluating proposals

1 include but are not limited to: Price; maintainability; reliability;
2 commonality; performance levels; life-cycle cost if applicable under
3 this section; cost of transportation or delivery; delivery schedule
4 offered; installation cost; cost of spare parts; availability of
5 parts and service offered; and the following:

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

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

10 (iii) Whether the proposer can perform the contract within the
11 time specified;

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

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

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

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

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

36 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
37 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect immediately.

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