
SUBSTITUTE SENATE BILL 5742

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Haugen, Horn, Winsley, Oke and McDonald; by request of The Blue Ribbon Commission on Transportation)

READ FIRST TIME 03/08/01.

1 AN ACT Relating to design-build procedures for public works; adding
2 new sections to chapter 47.20 RCW; adding new sections to chapter 47.60
3 RCW; creating a new section; and providing expiration dates.

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

5 NEW SECTION. **Sec. 1.** The legislature finds and declares that a
6 contracting procedure that facilitates construction of transportation
7 facilities in a more timely manner may occasionally be necessary to
8 ensure that construction can proceed simultaneously with the design of
9 the facility. The legislature further finds that the design-build
10 process and other alternative project delivery concepts achieve the
11 goals of time savings and avoidance of costly change orders.

12 The legislature finds and declares that a 2001 audit, conducted by
13 Talbot, Korvola & Warwick, examining the Washington state ferries'
14 capital program resulted in a recommendation for improvements and
15 changes in auto ferry procurement processes. The auditors recommended
16 that auto ferries be procured through use of a modified request for
17 proposals process whereby the prevailing shipbuilder and Washington
18 state ferries engage in a design and build partnership. This process
19 promotes ownership of the design by the shipbuilder while using the

1 department of transportation's expertise in ferry design and
2 operations. Alternative processes like design-build partnerships can
3 promote innovation and create competitive incentives that increase the
4 likelihood of finishing projects on time and within the budget.

5 The purpose of this act is to authorize the department's use of a
6 modified request for proposals process for procurement of auto ferries,
7 and to prescribe appropriate requirements and criteria to ensure that
8 contracting procedures for this procurement process serve the public
9 interest.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.20 RCW
11 to read as follows:

12 The department of transportation shall develop a process for
13 awarding competitively bid highway construction contracts for projects
14 over ten million dollars that may be constructed using a design-build
15 procedure. As used in this section and section 3 of this act, "design-
16 build procedure" means a method of contracting under which the
17 department of transportation contracts with another party for the party
18 to both design and build the structures, facilities, and other items
19 specified in the contract.

20 The process developed by the department must, at a minimum, include
21 the scope of services required under the design-build procedure,
22 contractor prequalification requirements, criteria for evaluating
23 technical information and project costs, contractor selection criteria,
24 and issue resolution procedures. In addition, the department should
25 provide methods by which public employees may participate in the
26 design-build process. This section expires April 30, 2008.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 47.20 RCW
28 to read as follows:

29 The department of transportation may use the design-build procedure
30 for public works projects over ten million dollars where:

31 (1) The construction activities are highly specialized and a
32 design-build approach is critical in developing the construction
33 methodology; or

34 (2) The projects selected provide opportunity for greater
35 innovation and efficiencies between the designer and the builder; or

36 (3) Significant savings in project delivery time would be realized.

37 This section expires April 30, 2008.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 47.60 RCW
2 to read as follows:

3 (1) The department may purchase new auto ferries through use of a
4 modified request for proposals process whereby the prevailing
5 shipbuilder and the department engage in a design and build partnership
6 for the design and construction of the auto ferries. The process
7 consists of the three phases described in subsection (2) of this
8 section.

9 (2) The definitions in this subsection apply throughout sections 5
10 through 10 of this act.

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

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

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

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 47.60 RCW
19 to read as follows:

20 To commence the request for proposals process, the department shall
21 publish a notice of its intent once a week for at least two consecutive
22 weeks in at least one trade paper and one other paper, both of general
23 circulation in the state. The notice must contain, but is not limited
24 to, the following information:

25 (1) The number of auto ferries to be procured, the auto and
26 passenger capacities, the delivery dates, and the estimated price range
27 for the contract;

28 (2) A statement that a modified request for proposals design and
29 build partnership will be used in the procurement process;

30 (3) A short summary of the requirements for prequalification of
31 proposers including a statement that prequalification is a prerequisite
32 to submittal of a proposal in phase one; and

33 (4) An address and telephone number that may be used to obtain a
34 prequalification questionnaire and the request for proposals.

35 NEW SECTION. **Sec. 6.** A new section is added to chapter 47.60 RCW
36 to read as follows:

1 Subject to legislative appropriation for the procurement of
2 vessels, the department shall issue a request for proposals to
3 interested parties that must include, at least, the following:

4 (1) Solicitation of a proposal to participate in a design and build
5 partnership with the department to design and construct the auto
6 ferries;

7 (2) Instructions on the prequalification process and procedures;

8 (3) A description of the modified request for proposals process.
9 Under this process, the department may modify any component of the
10 request for proposals, including the outline specifications, by
11 addendum at any time before the submittal of bids in phase three;

12 (4) A description of the design and build partnership process to be
13 used for procurement of the vessels;

14 (5) Outline specifications that provide the requirements for the
15 vessels including, but not limited to, items such as length, beam,
16 displacement, speed, propulsion requirements, capacities for autos and
17 passengers, passenger space characteristics, and crew size. The
18 department will produce notional line drawings depicting hull geometry
19 that will interface with Washington state ferries terminal facilities.
20 Notional lines may be modified in phase two, subject to approval by the
21 department;

22 (6) Instructions for the development of technical proposals in
23 phase two, and information regarding confidentiality of technical
24 proposals;

25 (7) The vessel delivery schedule, identification of the port on
26 Puget Sound where delivery must take place, and the location where
27 acceptance trials must be held;

28 (8) The estimated price range for the contract;

29 (9) The form and amount of the required bid deposit and contract
30 security;

31 (10) A copy of the contract that will be signed by the successful
32 proposer;

33 (11) The date by which proposals in phase one must be received by
34 the department in order to be considered;

35 (12) A description of information to be submitted in the proposals
36 in phase one concerning each proposer's qualifications, capabilities,
37 and experience;

1 (13) A statement of the maximum number of proposers that may be
2 selected in phase one for development of technical proposals in phase
3 two;

4 (14) Criteria that will be used for the phase one selection of
5 proposers to participate in the phase two development of technical
6 proposals;

7 (15) A description of the process that will be used for the phase
8 three submittal and evaluation of bids, award of the contract, and
9 postaward administrative activities;

10 (16) A requirement that the contractor comply with all applicable
11 laws, rules, and regulations including but not limited to those
12 pertaining to the environment, worker health and safety, and prevailing
13 wages;

14 (17) A requirement that the vessels be constructed within the
15 boundaries of the state of Washington except that equipment furnished
16 by the state and components, products, and systems that are standard
17 manufactured items are not subject to the in-state requirement under
18 this subsection. For the purposes of this subsection, "constructed"
19 means the fabrication, by the joining together by welding or fastening
20 of all steel parts from which the total vessel is constructed,
21 including, but not limited to, all shell frames, longitudinals,
22 bulkheads, webs, piping runs, wire ways, and ducting. "Constructed"
23 also means the installation of all components and systems, including,
24 but not limited to, equipment and machinery, castings, electrical,
25 electronics, deck covering, lining, paint, and joiner work required by
26 the contract. "Constructed" also means the interconnection of all
27 equipment, machinery, and services, such as piping, wiring, and
28 ducting; and

29 (18) A requirement that all warranty work on the vessel must be
30 performed within the boundaries of the state of Washington, insofar as
31 practical.

32 NEW SECTION. **Sec. 7.** A new section is added to chapter 47.60 RCW
33 to read as follows:

34 Phase one of the request for proposals process consists of
35 evaluation and selection of prequalified proposers to participate in
36 subsequent development of technical proposals in phase two, as follows:

37 (1) The department shall issue a request for proposals to
38 interested parties.

1 (2) The request for proposals must require that each proposer
2 prequalify for the contract under chapter 468-310 WAC, except that the
3 department may adopt rules for the financial prequalification of
4 proposers for this specific contract only. The department shall modify
5 the financial prequalification rules in chapter 468-310 WAC in order to
6 maximize competition among financially capable and otherwise qualified
7 proposers. In adopting these rules, the department shall consider
8 factors including, without limitation: (a) Shipyard resources in
9 Washington state; (b) the cost to design and construct multiple vessels
10 under a single contract without options; and (c) the sequenced delivery
11 schedule for the vessels.

12 (3) The department may use some, or all, of the nonfinancial
13 prequalification factors as part of the evaluation factors in phase one
14 to enable the department to select a limited number of best qualified
15 proposers to participate in development of technical proposals in phase
16 two.

17 (4) The department shall evaluate submitted proposals in accordance
18 with the selection criteria established in the request for proposals.
19 Selection criteria may include, but are not limited to, the following:

- 20 (a) Shipyard facilities;
- 21 (b) Organization components;
- 22 (c) Design capability;
- 23 (d) Build strategy;
- 24 (e) Experience and past performance;
- 25 (f) Ability to meet vessel delivery dates;
- 26 (g) Projected workload; and
- 27 (h) Expertise of project team and other key personnel.

28 (5) Upon concluding its evaluation of proposals, the department
29 shall select the best qualified proposers in accordance with the
30 request for proposals. The selected proposers must participate in
31 development of technical proposals. Selection must be made in
32 accordance with the selection criteria stated in the request for
33 proposals. All proposers must be ranked in order of preference as
34 derived from the same selection criteria.

35 NEW SECTION. **Sec. 8.** A new section is added to chapter 47.60 RCW
36 to read as follows:

1 Phase two of the request for proposals process consists of
2 preparation of technical proposals in consultation with the department,
3 as follows:

4 (1) The development of technical proposals in compliance with the
5 detailed instructions provided in the request for proposals, including
6 the outline specifications, and any addenda to them. Technical
7 proposals must include the following:

8 (a) Design and specifications sufficient to fully depict the
9 ferries' characteristics and identify installed equipment;

10 (b) Drawings showing arrangements of equipment and details
11 necessary for the proposer to develop a firm, fixed price bid;

12 (c) Project schedule including vessel delivery dates; and

13 (d) Other appropriate items.

14 (2) The department shall conduct periodic reviews with each of the
15 selected proposers to consider and critique their designs, drawings,
16 and specifications. These reviews must be held to ensure that
17 technical proposals meet the department's requirements and are
18 responsive to the critiques conducted by the department during the
19 development of technical proposals.

20 (3) If, as a result of the periodic technical reviews or otherwise,
21 the department determines that it is in the best interests of the
22 department to modify any element of the request for proposals,
23 including the outline specifications, it shall do so by written addenda
24 to the request for proposals.

25 (4) Proposers must submit final technical proposals for approval
26 that include design, drawings, and specifications at a sufficient level
27 of detail to fully depict the ferries' characteristics and identify
28 installed equipment, and to enable a proposer to deliver a firm, fixed
29 price bid to the department. The department shall reject final
30 technical proposals that modify, fail to conform to, or are not fully
31 responsive to and in compliance with the requirements of the request
32 for proposals, including the outline specifications, as amended by
33 addenda.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 47.60 RCW
35 to read as follows:

36 Phase three consists of the submittal and evaluation of bids and
37 the award of the contract to the successful proposer for the final
38 design and construction of the auto ferries, as follows:

1 (1) The department shall request bids for detailed design and
2 construction of the vessels after completion of the review of technical
3 proposals in phase two. The department will review detailed design
4 drawings in phase three for conformity with the technical proposals
5 submitted in phase two. In no case may the department's review replace
6 the builder's responsibility to deliver a product meeting the phase two
7 technical proposal. The department may only consider bids from
8 selected proposers that have qualified to bid by submitting technical
9 proposals that have been approved by the department.

10 (2) Each qualified proposer must submit its total bid price for all
11 vessels, including certification that the bid is based upon its
12 approved technical proposal and the request for proposals.

13 (3) Bids constitute an offer and remain open for ninety days from
14 the date of the bid opening. A deposit in cash, certified check,
15 cashier's check, or surety bond in an amount specified in the request
16 for proposals must accompany each bid and no bid may be considered
17 unless the deposit is enclosed.

18 (4) The department shall evaluate the submitted bids. Upon
19 completing the bid evaluation, the department may select the responsive
20 and responsible proposer that offers the lowest total bid price for all
21 vessels.

22 (5) The department may waive informalities in the proposal and bid
23 process, accept a bid from the lowest responsive and responsible
24 proposer, reject any or all bids, republish, and revise or cancel the
25 request for proposals to serve the best interests of the department.

26 (6) The department may:

27 (a) Award the contract to the proposer that has been selected as
28 the responsive and responsible proposer that has submitted the lowest
29 total bid price;

30 (b) If a contract cannot be signed with the apparent successful
31 proposer, award the contract to the next lowest responsive and
32 responsible proposer; or

33 (c) If necessary, repeat this procedure with each responsive and
34 responsible proposer in order of rank until the list of those proposers
35 has been exhausted.

36 (7) If the department awards a contract to a proposer under this
37 section, and the proposer fails to enter into the contract and furnish
38 satisfactory contract security as required by chapter 39.08 RCW within
39 twenty days from the date of award, its deposit is forfeited to the

1 state and will be deposited by the state treasurer to the credit of the
2 Puget Sound capital construction account. Upon the execution of a
3 ferry design and construction contract all proposal deposits will be
4 returned.

5 (8) The department may provide an honorarium to reimburse each
6 unsuccessful phase three proposer for a portion of its technical
7 proposal preparation costs at a preset, fixed amount to be specified in
8 the request for proposals. If the department rejects all bids, the
9 department may provide the honoraria to all phase three proposers that
10 submitted bids.

11 NEW SECTION. **Sec. 10.** A new section is added to chapter 47.60 RCW
12 to read as follows:

13 (1) The department shall immediately notify those proposers that
14 are not selected to participate in development of technical proposals
15 in phase one and those proposers who submit unsuccessful bids in phase
16 three.

17 (2) The department's decision is conclusive unless an aggrieved
18 proposer files an appeal with the superior court of Thurston county
19 within five days after receiving notice of the department's award
20 decision. The court shall hear any such appeal on the department's
21 administrative record for the project. The court may affirm the
22 decision of the department, or it may reverse or remand the
23 administrative decision if it determines the action of the department
24 was arbitrary and capricious.

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