
ENGROSSED SUBSTITUTE HOUSE BILL 2759

State of Washington

63rd Legislature

2014 Regular Session

By House Transportation (originally sponsored by Representatives Seaquist, Smith, Young, Ryu, and Muri)

READ FIRST TIME 02/11/14.

1 AN ACT Relating to modifying certain requirements for ferry vessel
2 construction; amending RCW 47.60.005, 47.60.010, 47.60.810, 47.60.814,
3 47.60.820, and 47.56.030; adding new sections to chapter 47.60 RCW; and
4 repealing RCW 47.56.780.

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

6 **Sec. 1.** RCW 47.60.005 and 2008 c 124 s 1 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Adaptive management" means a systematic process for
11 continually improving management policies and practices by learning
12 from the outcomes of operational programs.

13 (2) "Capital plan" means the state ferry system plan developed by
14 the department as described in RCW 47.06.050(2), reviewed by the
15 commission, and reported to the transportation committees of the
16 legislature by the commission.

17 (3) "Capital project" has the same meaning as used in budget
18 instructions developed by the office of financial management.

1 (4) "Commission" means the transportation commission created in RCW
2 47.01.051.

3 (5) "Improvement project" has the same meaning as in the budget
4 instructions developed by the office of financial management. If the
5 budget instructions do not define improvement project, then it has the
6 same meaning as "program project" in the budget instructions. If a
7 project meets both the improvement project and preservation project
8 definitions in this section it must be defined as an improvement
9 project. New vessel acquisitions must be defined as improvement
10 projects.

11 (6) "Life-cycle cost model" means that portion of a capital asset
12 inventory system which, among other things, is used to estimate future
13 preservation needs.

14 (7) "Maintenance cost" has the same meaning as used in budget
15 instructions developed by the office of financial management.

16 (8) "Preservation project" has the same meaning as used in budget
17 instructions developed by the office of financial management.

18 (9) "Route" means all ferry sailings from one location to another,
19 such as the Seattle to Bainbridge route or the Port Townsend to
20 Keystone route.

21 (10) "Sailing" means an individual ferry sailing for a specific
22 route, such as the 5:00 p.m. sailing from Seattle to Bremerton.

23 (11) "Travel shed" means one or more ferry routes with distinct
24 characteristics as determined by the department.

25 (12) "Best life-cycle value" means the consideration of the total
26 cost to the state to purchase, operate, maintain, and dispose of a
27 specific vessel.

28 (13) "Fixed price contract" means a contract that requires the
29 contractor to deliver a specified project for a set price. Change
30 orders on fixed price contracts are allowable but should be used on a
31 very limited basis.

32 **Sec. 2.** RCW 47.60.010 and 2008 c 122 s 20 are each amended to read
33 as follows:

34 The department is authorized to acquire by lease, charter,
35 contract, purchase, condemnation, or construction, and partly by any or
36 all of such means, and to thereafter operate, improve, and extend, a
37 system of ferries on and crossing Puget Sound and any of its tributary

1 waters and connections thereof, and connecting with the public streets
2 and highways in the state. However, any new vessel planning,
3 construction, purchase, analysis, or design work must be consistent
4 with RCW 47.60.810. The system of ferries shall include such boats,
5 vessels, wharves, docks, approaches, landings, franchises, licenses,
6 and appurtenances as shall be determined by the department to be
7 necessary or desirable for efficient operation of the ferry system and
8 best serve the public. Subject to RCW 47.56.820, the department may in
9 like manner acquire by purchase, condemnation, or construction and
10 include in the ferry system such toll bridges, approaches, and
11 connecting roadways as may be deemed by the department advantageous in
12 channeling traffic to points served by the ferry system. In addition
13 to the powers of acquisition granted by this section, the department is
14 empowered to enter into any contracts, agreements, or leases with any
15 person, firm, or corporation and to thereby provide, on such terms and
16 conditions as it shall determine, for the operation of any ferry or
17 ferries or system thereof, whether acquired by the department or not.

18 The authority of the department to sell and lease back any state
19 ferry, for federal tax purposes only, as authorized by 26 U.S.C., Sec.
20 168(f)(8) is confirmed. Legal title and all incidents of legal title
21 to any ferry sold and leased back (except for the federal tax benefits
22 attributable to the ownership thereof) shall remain in the state of
23 Washington.

24 **Sec. 3.** RCW 47.60.810 and 2001 c 226 s 4 are each amended to read
25 as follows:

26 (1) The department (~~((may purchase new auto ferries through))~~) shall
27 use (~~((of))~~) a modified request for proposals process when purchasing new
28 auto ferries pursuant to a contract advertised for bid after the
29 effective date of this section whereby the prevailing shipbuilder and
30 the department engage in a design and build partnership for the design
31 and construction of the auto ferries. The process consists of the
32 three phases described in subsection (~~((2))~~) (3) of this section.

33 (2) Unless the use of a direct owner's representative is
34 specifically authorized by the office of financial management,
35 throughout the three phases described in subsection (3) of this
36 section, the department shall employ an independent owners

1 representative to serve as a third-party intermediary between the
2 department and the proposers. The independent owners representative
3 shall:

4 (a) Serve as the department's primary advocate and communicator
5 with the proposers;

6 (b) Perform project quality oversight;

7 (c) Manage any change order requests; and

8 (d) Ensure that the contract is adhered to and the department's
9 best interests are considered in all decisions.

10 (3) The definitions in this subsection apply throughout RCW
11 47.60.812 through 47.60.822.

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

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

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

19 **Sec. 4.** RCW 47.60.814 and 2001 c 226 s 6 are each amended to read
20 as follows:

21 Subject to legislative appropriation for the procurement of
22 vessels, after the effective date of this section, the department shall
23 issue a request for proposals to interested parties that must include,
24 at least, the following:

25 (1) Solicitation of a proposal to participate in a design and build
26 partnership with the department to design and construct the auto
27 ferries;

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

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

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

35 (5) Outline specifications that provide the requirements for the
36 vessels including, but not limited to, items such as length, beam,
37 displacement, speed, propulsion requirements, capacities for autos and

1 passengers, passenger space characteristics, and crew size. The
2 department will produce notional line drawings depicting hull geometry
3 that will interface with Washington state ferries terminal facilities.
4 Notional lines may be modified in phase two, subject to approval by the
5 department;

6 (6) Instructions for the development of technical proposals in
7 phase two, and information regarding confidentiality of technical
8 proposals;

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

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

13 (9) Notification that the contract will be a fixed price contract
14 that delivers the best life-cycle value;

15 (10) The form and amount of the required bid deposit and contract
16 security;

17 ~~((+10+))~~ (11) A copy of the contract that will be signed by the
18 successful proposer;

19 ~~((+11+))~~ (12) The date by which proposals in phase one must be
20 received by the department in order to be considered;

21 ~~((+12+))~~ (13) A description of information to be submitted in the
22 proposals in phase one concerning each proposer's qualifications,
23 capabilities, and experience;

24 ~~((+13+))~~ (14) A statement of the maximum number of proposers that
25 may be selected in phase one for development of technical proposals in
26 phase two;

27 ~~((+14+))~~ (15) Criteria that will be used for the phase one
28 selection of proposers to participate in the phase two development of
29 technical proposals;

30 ~~((+15+))~~ (16) A description of the process that will be used for
31 the phase three submittal and evaluation of bids, award of the
32 contract, and postaward administrative activities;

33 ~~((+16+))~~ (17) A requirement that the contractor comply with all
34 applicable laws, rules, and regulations including but not limited to
35 those pertaining to the environment, worker health and safety, and
36 prevailing wages;

37 ~~((+17+))~~ (18) Except as provided in section 6 of this act, a
38 requirement that the vessels be constructed within the boundaries of

1 the state of Washington except that equipment furnished by the state
2 and components, products, and systems that are standard manufactured
3 items are not subject to the in-state requirement under this
4 subsection. For the purposes of this subsection, "constructed" means
5 the fabrication, by the joining together by welding or fastening of all
6 steel parts from which the total vessel is constructed, including, but
7 not limited to, all shell frames, longitudinals, bulkheads, webs,
8 piping runs, wire ways, and ducting. "Constructed" also means the
9 installation of all components and systems, including, but not limited
10 to, equipment and machinery, castings, electrical, electronics, deck
11 covering, lining, paint, and joiner work required by the contract.
12 "Constructed" also means the interconnection of all equipment,
13 machinery, and services, such as piping, wiring, and ducting; (~~and~~
14 ~~(18)~~) (19) A requirement that vessel design specifications and
15 drawings must be complete and be approved by the United States coast
16 guard, in accordance with federal regulatory requirements, before
17 vessel construction begins;
18 (20) A requirement that all designs, construction, and operational
19 maintenance of a vessel comply with all relevant standards promulgated
20 by the American bureau of shipping; and
21 (21) A requirement that all warranty work on the vessel must be
22 performed within the boundaries of the state of Washington, insofar as
23 practical.

24 NEW SECTION. Sec. 5. A new section is added to chapter 47.60 RCW
25 to read as follows:

26 The department must maintain a minimum of two vessels in the ferry
27 fleet that comply with the international convention for the safety of
28 life at sea.

29 NEW SECTION. Sec. 6. A new section is added to chapter 47.60 RCW
30 to read as follows:

31 If all responses to the initial request for proposals under RCW
32 47.60.814 are greater than five percent above the department's
33 engineer's estimate for the project, the department after consulting
34 with the office of financial management and finding that it is in the
35 state's financial interests to do so, may reject all proposals and

1 issue a subsequent request for proposals that is not subject to RCW
2 47.60.814(18).

3 **Sec. 7.** RCW 47.60.820 and 2001 c 226 s 9 are each amended to read
4 as follows:

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

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

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

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

25 (4) The department shall evaluate the submitted bids. Upon
26 completing the bid evaluation, the department may select the responsive
27 and responsible proposer that offers the lowest total fixed price bid
28 (~~(price)~~) on a best life-cycle value basis for all vessels.

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

33 (6) The department may:

34 (a) Award the contract to the proposer that has been selected as
35 the responsive and responsible proposer that has submitted the lowest
36 total fixed price bid (~~(price)~~) on a best life-cycle value basis;

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

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

7 (7) If the department awards a contract to a proposer under this
8 section, and the proposer fails to enter into the contract and furnish
9 satisfactory contract security as required by chapter 39.08 RCW within
10 twenty days from the date of award, its deposit is forfeited to the
11 state and will be deposited by the state treasurer to the credit of the
12 Puget Sound capital construction account. Upon the execution of a
13 ferry design and construction contract all proposal deposits will be
14 returned.

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

21 (9) To accommodate change orders on a fixed price contract, the
22 department shall request that the legislative appropriation for any
23 auto ferry construction project include up to, but no more than, a five
24 percent price contingency. This contingency must be identified in the
25 funding request to the legislature. The office of financial management
26 must approve any expenditure for a change order that exceeds two
27 hundred fifty thousand dollars. After completion of the project, the
28 department must provide to the contractor half of any remaining amount
29 of the contingency identified in this subsection if the project is
30 completed under the original budget and by the original date of
31 delivery.

32 **Sec. 8.** RCW 47.56.030 and 2008 c 122 s 8 are each amended to read
33 as follows:

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

35 (a) Unless otherwise delegated, and subject to RCW 47.56.820, the
36 department of transportation shall have full charge of the planning,

1 analysis, and construction of all toll bridges and other toll
2 facilities including the Washington state ferries, and the operation
3 and maintenance thereof.

4 (b) The transportation commission shall determine and establish the
5 tolls and charges thereon.

6 (c) Unless otherwise delegated, and subject to RCW 47.56.820, the
7 department shall have full charge of planning, analysis, and design of
8 all toll facilities. The department may conduct the planning,
9 analysis, and design of toll facilities as necessary to support the
10 legislature's consideration of toll authorization.

11 (d) The department shall utilize and administer toll collection
12 systems that are simple, unified, and interoperable. To the extent
13 practicable, the department shall avoid the use of toll booths. The
14 department shall set the statewide standards and protocols for all toll
15 facilities within the state, including those authorized by local
16 authorities.

17 (e) Except as provided in this section, the department shall
18 proceed with the construction of such toll bridges and other facilities
19 and the approaches thereto by contract in the manner of state highway
20 construction immediately upon there being made available funds for such
21 work and shall prosecute such work to completion as rapidly as
22 practicable. The department is authorized to negotiate contracts for
23 any amount without bid under (e)(i) and (ii) of this subsection:

24 (i) Emergency contracts, in order to make repairs to ferries or
25 ferry terminal facilities or removal of such facilities whenever
26 continued use of ferries or ferry terminal facilities constitutes a
27 real or immediate danger to the traveling public or precludes prudent
28 use of such ferries or facilities; and

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

34 (f) Any new vessel planning, construction, purchase, analysis, or
35 design work must be consistent with RCW 47.60.810.

36 (2) The department shall proceed with the procurement of materials,
37 supplies, services, and equipment needed for the support, maintenance,

1 and use of a ferry, ferry terminal, or other facility operated by
2 Washington state ferries, in accordance with chapter 43.19 RCW except
3 as follows:

4 (a) When the secretary of the department of transportation
5 determines in writing that the use of invitation for bid is either not
6 practicable or not advantageous to the state and it may be necessary to
7 make competitive evaluations, including technical or performance
8 evaluations among acceptable proposals to complete the contract award,
9 a contract may be entered into by use of a competitive sealed proposals
10 method, and a formal request for proposals solicitation. Such formal
11 request for proposals solicitation shall include a functional
12 description of the needs and requirements of the state and the
13 significant factors.

14 (b) When purchases are made through a formal request for proposals
15 solicitation the contract shall be awarded to the responsible proposer
16 whose competitive sealed proposal is determined in writing to be the
17 most advantageous to the state taking into consideration price and
18 other evaluation factors set forth in the request for proposals. No
19 significant factors may be used in evaluating a proposal that are not
20 specified in the request for proposals. Factors that may be considered
21 in evaluating proposals include but are not limited to: Price;
22 maintainability; reliability; commonality; performance levels; life
23 cycle cost if applicable under this section; cost of transportation or
24 delivery; delivery schedule offered; installation cost; cost of spare
25 parts; availability of parts and service offered; and the following:

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

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

30 (iii) Whether the proposer can perform the contract within the time
31 specified;

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

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

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

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

3 (c) When purchases are made through a request for proposal process,
4 proposals received shall be evaluated based on the evaluation factors
5 set forth in the request for proposal. When issuing a request for
6 proposal for the procurement of propulsion equipment or systems that
7 include an engine, the request for proposal must specify the use of a
8 life cycle cost analysis that includes an evaluation of fuel
9 efficiency. When a life cycle cost analysis is used, the life cycle
10 cost of a proposal shall be given at least the same relative importance
11 as the initial price element specified in the request of proposal
12 documents. The department may reject any and all proposals received.
13 If the proposals are not rejected, the award shall be made to the
14 proposer whose proposal is most advantageous to the department,
15 considering price and the other evaluation factors set forth in the
16 request for proposal.

17 NEW SECTION. **Sec. 9.** RCW 47.56.780 (New ferry vessel construction
18 for service on routes that require a vessel that carries no more than
19 one hundred motor vehicles--How constructed--Warranty work) and 2008 c
20 4 s 2 are each repealed.

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