

2 **SHB 1680** - S AMD TO TRAN COMM AMD (S-2398.1/01) AMD 375
3 By Senators Haugen and Benton

4 ADOPTED 04/20/01

5 Beginning on page 1, line 7 of the amendment, strike everything
6 through page 9, line 8, and insert the following:

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

14 The legislature finds and declares that a 2001 audit, conducted by
15 Talbot, Korvola & Warwick, examining the Washington state ferries'
16 capital program resulted in a recommendation for improvements and
17 changes in auto ferry procurement processes. The auditors recommended
18 that auto ferries be procured through use of a modified request for
19 proposals process whereby the prevailing shipbuilder and Washington
20 state ferries engage in a design and build partnership. This process
21 promotes ownership of the design by the shipbuilder while using the
22 department of transportation's expertise in ferry design and
23 operations. Alternative processes like design-build partnerships can
24 promote innovation and create competitive incentives that increase the
25 likelihood of finishing projects on time and within the budget.

26 The purpose of this act is to authorize the department's use of a
27 modified request for proposals process for procurement of auto ferries,
28 and to prescribe appropriate requirements and criteria to ensure that
29 contracting procedures for this procurement process serve the public
30 interest.

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

33 The department of transportation shall develop a process for
34 awarding competitively bid highway construction contracts for projects
35 over ten million dollars that may be constructed using a design-build

1 procedure. As used in this section and section 3 of this act, "design-
2 build procedure" means a method of contracting under which the
3 department of transportation contracts with another party for the party
4 to both design and build the structures, facilities, and other items
5 specified in the contract.

6 The process developed by the department must, at a minimum, include
7 the scope of services required under the design-build procedure,
8 contractor prequalification requirements, criteria for evaluating
9 technical information and project costs, contractor selection criteria,
10 and issue resolution procedures. This section expires April 30, 2008.

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

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

15 (1) The construction activities are highly specialized and a
16 design-build approach is critical in developing the construction
17 methodology; or

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

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

21 This section expires April 30, 2008.

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

24 (1) The department may purchase new auto ferries through use of a
25 modified request for proposals process whereby the prevailing
26 shipbuilder and the department engage in a design and build partnership
27 for the design and construction of the auto ferries. The process
28 consists of the three phases described in subsection (2) of this
29 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (5) Outline specifications that provide the requirements for the
37 vessels including, but not limited to, items such as length, beam,

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

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

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

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

14 (9) The form and amount of the required bid deposit and contract
15 security;

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

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

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

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

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

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

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

36 (17) A requirement that the vessels be constructed within the
37 boundaries of the state of Washington except that equipment furnished
38 by the state and components, products, and systems that are standard
39 manufactured items are not subject to the in-state requirement under

1 this subsection. For the purposes of this subsection, "constructed"
2 means the fabrication, by the joining together by welding or fastening
3 of all steel parts from which the total vessel is constructed,
4 including, but not limited to, all shell frames, longitudinals,
5 bulkheads, webs, piping runs, wire ways, and ducting. "Constructed"
6 also means the installation of all components and systems, including,
7 but not limited to, equipment and machinery, castings, electrical,
8 electronics, deck covering, lining, paint, and joiner work required by
9 the contract. "Constructed" also means the interconnection of all
10 equipment, machinery, and services, such as piping, wiring, and
11 ducting; and

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

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

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

20 (1) The department shall issue a request for proposals to
21 interested parties.

22 (2) The request for proposals must require that each proposer
23 prequalify for the contract under chapter 468-310 WAC, except that the
24 department may adopt rules for the financial prequalification of
25 proposers for this specific contract only. The department shall modify
26 the financial prequalification rules in chapter 468-310 WAC in order to
27 maximize competition among financially capable and otherwise qualified
28 proposers. In adopting these rules, the department shall consider
29 factors including, without limitation: (a) Shipyard resources in
30 Washington state; (b) the cost to design and construct multiple vessels
31 under a single contract without options; and (c) the sequenced delivery
32 schedule for the vessels.

33 (3) The department may use some, or all, of the nonfinancial
34 prequalification factors as part of the evaluation factors in phase one
35 to enable the department to select a limited number of best qualified
36 proposers to participate in development of technical proposals in phase
37 two.

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

- 4 (a) Shipyard facilities;
- 5 (b) Organization components;
- 6 (c) Design capability;
- 7 (d) Build strategy;
- 8 (e) Experience and past performance;
- 9 (f) Ability to meet vessel delivery dates;
- 10 (g) Projected workload; and
- 11 (h) Expertise of project team and other key personnel.

12 (5) Upon concluding its evaluation of proposals, the department
13 shall select the best qualified proposers in accordance with the
14 request for proposals. The selected proposers must participate in
15 development of technical proposals. Selection must be made in
16 accordance with the selection criteria stated in the request for
17 proposals. All proposers must be ranked in order of preference as
18 derived from the same selection criteria.

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

21 Phase two of the request for proposals process consists of
22 preparation of technical proposals in consultation with the department,
23 as follows:

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

- 28 (a) Design and specifications sufficient to fully depict the
29 ferries' characteristics and identify installed equipment;
- 30 (b) Drawings showing arrangements of equipment and details
31 necessary for the proposer to develop a firm, fixed price bid;
- 32 (c) Project schedule including vessel delivery dates; and
- 33 (d) Other appropriate items.

34 (2) The department shall conduct periodic reviews with each of the
35 selected proposers to consider and critique their designs, drawings,
36 and specifications. These reviews must be held to ensure that
37 technical proposals meet the department's requirements and are

1 responsive to the critiques conducted by the department during the
2 development of technical proposals.

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

8 (4) Proposers must submit final technical proposals for approval
9 that include design, drawings, and specifications at a sufficient level
10 of detail to fully depict the ferries' characteristics and identify
11 installed equipment, and to enable a proposer to deliver a firm, fixed
12 price bid to the department. The department shall reject final
13 technical proposals that modify, fail to conform to, or are not fully
14 responsive to and in compliance with the requirements of the request
15 for proposals, including the outline specifications, as amended by
16 addenda.

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

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

22 (1) The department shall request bids for detailed design and
23 construction of the vessels after completion of the review of technical
24 proposals in phase two. The department will review detailed design
25 drawings in phase three for conformity with the technical proposals
26 submitted in phase two. In no case may the department's review replace
27 the builder's responsibility to deliver a product meeting the phase two
28 technical proposal. The department may only consider bids from
29 selected proposers that have qualified to bid by submitting technical
30 proposals that have been approved by the department.

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

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

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

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

9 (6) The department may:

10 (a) Award the contract to the proposer that has been selected as
11 the responsive and responsible proposer that has submitted the lowest
12 total bid price;

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

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

19 (7) If the department awards a contract to a proposer under this
20 section, and the proposer fails to enter into the contract and furnish
21 satisfactory contract security as required by chapter 39.08 RCW within
22 twenty days from the date of award, its deposit is forfeited to the
23 state and will be deposited by the state treasurer to the credit of the
24 Puget Sound capital construction account. Upon the execution of a
25 ferry design and construction contract all proposal deposits will be
26 returned.

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

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

35 (1) The department shall immediately notify those proposers that
36 are not selected to participate in development of technical proposals
37 in phase one and those proposers who submit unsuccessful bids in phase
38 three.

1 (2) The department's decision is conclusive unless an aggrieved
2 proposer files an appeal with the superior court of Thurston county
3 within five days after receiving notice of the department's award
4 decision. The court shall hear any such appeal on the department's
5 administrative record for the project. The court may affirm the
6 decision of the department, or it may reverse or remand the
7 administrative decision if it determines the action of the department
8 was arbitrary and capricious."

EFFECT: Removes language regarding public employee involvement in
design-build.

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