
HOUSE BILL 1987

State of Washington

57th Legislature

2001 Regular Session

By Representatives Mitchell, Fisher, Woods and McIntire; by request of Office of Financial Management

Read first time 02/12/2001. Referred to Committee on Transportation.

1 AN ACT Relating to procuring new auto ferries; adding new sections
2 to chapter 47.60 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds and declares that a
5 2001 audit, conducted by Talbot, Korvola & Warwick, examining the
6 Washington state ferries' capital program resulted in a recommendation
7 for improvements and changes in auto ferry procurement processes. The
8 auditors recommended that auto ferries, including vessels, be procured
9 through use of a modified request for proposals process whereby the
10 prevailing shipbuilder and Washington state ferries engage in a design
11 and build partnership. This process promotes ownership of the design
12 by the shipbuilder while utilizing the department of transportation's
13 expertise in ferry design and operations.

14 The purpose of this act is to authorize the department's use of a
15 modified request for proposals process for procurement of four auto
16 ferries, and to prescribe appropriate requirements and criteria to
17 ensure that contracting procedures for this procurement process serve
18 the public interest.

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

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

9 (2) The definitions in this subsection apply throughout sections 2
10 through 8 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 and
16 the award of the contract to the successful proposer for the design and
17 construction of the four auto ferries.

18 NEW SECTION. **Sec. 3.** 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 proposal 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. 4.** A new section is added to chapter 47.60 RCW
36 to read as follows:

1 The department shall issue a request for proposals to interested
2 parties that must include, at least, the following:

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

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

7 (3) A description of the modified request for proposals process.
8 Under this process, the department has the right to modify any
9 component of the request for proposals, including the outline
10 specifications, by addendum at any time prior to the opening of bids in
11 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;

18 (6) Instructions for the development of technical proposals in
19 phase two;

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

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

24 (9) The form and amount of the required contract security;

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

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

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

32 (13) A statement of the maximum number of proposers that may be
33 selected in phase one for development of technical proposals in phase
34 two;

35 (14) Criteria that will be used for the phase one selection of
36 proposers to participate in the phase two development of technical
37 proposals;

38 (15) A description of the process that will be used for the phase
39 three submittal and evaluation of bids, and award of the contract;

1 (16) A requirement that the contractor comply with all applicable
2 laws, rules, and regulations including but not limited to those
3 pertaining to the environment, worker health and safety, and prevailing
4 wages;

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

20 (18) A requirement that all warranty work on the vessel shall be
21 performed within the boundaries of the state of Washington, insofar as
22 practical.

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

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

28 (1) The department shall issue a request for proposals to
29 interested parties.

30 (2) The request for proposals must require that each proposer
31 prequalify for the contract pursuant to the requirements of chapter
32 468-310 WAC, except that the department may adopt rules for the
33 financial prequalification of proposers for this specific contract
34 only. The department shall modify the financial prequalification rules
35 in chapter 468-310 WAC in order to maximize competition among
36 financially capable and otherwise qualified proposers. In adopting
37 these rules, the department shall consider factors including, without
38 limitation: (a) Shipyard resources in Washington state; (b) the cost

1 to design and construct multiple vessels under a single contract
2 without options; and (c) the sequenced delivery schedule for the
3 vessels.

4 (3) The department may use some, or all, of the nonfinancial
5 prequalification factors as part of the evaluation factors in phase one
6 to enable the department to select a limited number of best qualified
7 proposers to participate in development of technical proposals in phase
8 two.

9 (4) The department shall evaluate submitted proposals in accordance
10 with the selection criteria established in the request for proposals.
11 Selection criteria may include, but is not limited to, the following:

12 (a) Shipyard facilities;

13 (b) Organization components;

14 (c) Design capability;

15 (d) Build strategy;

16 (e) Experience and past performance;

17 (f) Ability to meet vessel delivery dates;

18 (g) Projected workload; and

19 (h) Expertise of project team and other key personnel.

20 (5) Upon concluding its evaluation of proposals, the department
21 shall select the best qualified proposers in accordance with the
22 request for proposals. The selected proposers must participate in
23 development of technical proposals. Selection must be made in
24 accordance with the selection criteria stated in the request for
25 proposals. All proposers must be ranked in order of preference as
26 derived from the same selection criteria.

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

29 Phase two of the request for proposals process consists of
30 preparation of technical proposals in consultation with the department,
31 as follows:

32 (1) The development of technical proposals in compliance with the
33 detailed instructions provided in the request for proposals, including
34 the outline specifications, and any addenda thereto. Technical
35 proposals must include the following:

36 (a) Detailed design and specifications;

37 (b) Drawings;

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

1 (d) Other appropriate items.

2 (2) The department shall conduct periodic reviews with each of the
3 selected proposers to consider and critique their work in progress.
4 These reviews must be held to ensure that technical proposals meet the
5 department's requirements and are responsive to the critiques conducted
6 by the department during the development of technical proposals.

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

12 (4) Proposers must submit final technical proposals to the
13 department for approval. The department shall reject final technical
14 proposals that modify, fail to conform to, or are not fully responsive
15 to and in compliance with the requirements of the request for
16 proposals, including the outline specifications, as amended by addenda.

17 NEW SECTION. **Sec. 7.** 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 four auto ferries, as follows:

22 (1) The department shall request bids for design and construction
23 of the vessels following completion of the review of technical
24 proposals. The department may only consider bids from selected
25 proposers that have qualified to bid by submitting technical proposals
26 that have been approved by the department.

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

30 (3) Bids constitute an offer and remain open for ninety days from
31 the date of the bid opening. A deposit in cash, certified check,
32 cashier's check, or surety bond in an amount equal to one percent of
33 the total bid price must accompany each bid and no bid may be
34 considered unless the deposit is enclosed.

35 (4) The department shall evaluate the submitted bids. Upon
36 completing the bid evaluation, the department may select the responsive
37 and responsible proposer that offers the lowest total bid price for all
38 four vessels.

1 (5) The department has the right to waive informalities in the
2 proposal and bid process, accept a bid from the lowest responsive and
3 responsible proposer, reject any or all bids, republish, and to revise
4 or cancel the request for proposals to serve the best interests of the
5 department.

6 (6) The department may:

7 (a) Award the contract to the proposer that has been selected as
8 the responsive and responsible proposer that has submitted the lowest
9 total bid price;

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

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

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

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

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

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

36 (2) The department's decision is conclusive unless an aggrieved
37 proposer files an appeal with the superior court of Thurston county
38 within five days after receiving notice of the department's award

1 decision. The court shall hear any such appeal on the department's
2 administrative record for the project. The court may affirm the
3 decision of the department, or it may reverse or remand the
4 administrative decision if it determines the action of the department
5 was arbitrary and capricious.

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