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**SECOND ENGROSSED SUBSTITUTE SENATE BILL 5992**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Transportation (originally sponsored by Senators King, Hobbs, Fain, Liias, Litzow, Braun, Schoesler, Parlette, Warnick, Sheldon, Becker, and Brown)

AN ACT Relating to modifying certain requirements for ferry vessel construction; amending RCW 47.60.005, 47.60.010, 47.60.810, 47.60.814, 47.60.820, and 47.56.030; adding a new section to chapter 47.60 RCW; repealing RCW 47.56.780; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) "Life-cycle cost analysis" means an analysis of the full net present value cost of constructing and operating a vessel over its life span, including capital costs, financing costs, operation and maintenance costs, decommissioning costs, and variable costs including fuel.

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

The department is authorized to acquire by lease, charter, contract, purchase, condemnation, or construction, and partly by any or all of such means, and to thereafter operate, improve, and extend, a system of ferries on and crossing Puget Sound and any of its tributary waters and connections thereof, and connecting with the public streets and highways in the state. However, any new vessel planning, construction, purchase, analysis, or design work must be consistent with RCW 47.60.810. The system of ferries shall include such boats, vessels, wharves, docks, approaches, landings, franchises, licenses, and appurtenances as shall be determined by the department to be necessary or desirable for efficient operation of the ferry system and best serve the public. Subject to RCW 47.56.820, the department may in like manner acquire by purchase, condemnation, or construction and include in the ferry system such toll bridges, approaches, and connecting roadways as may be deemed by the department advantageous in channeling traffic to points served by the ferry system. In addition to the powers of acquisition granted by this section, the department is empowered to enter into any contracts, agreements, or leases with any person, firm, or corporation and to thereby provide, on such terms and conditions as it shall determine, for the operation of any ferry or ferries or system thereof, whether acquired by the department or not.

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

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

(1) The department ((~~may purchase new auto ferries through~~)) shall use ((~~of~~)) a modified request for proposals process when purchasing new auto ferries, except for new 144-auto ferries purchased through an option on a contract executed before the effective date of this section, whereby the prevailing shipbuilder and the department engage in a design and build partnership for the design and construction of the auto ferries. The process consists of the three phases described in subsection ((~~(2)~~)) (3) of this section.

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

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

(b) Perform project quality oversight;

(c) Manage any change order requests;

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

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

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

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

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

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

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

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

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

((~~(2)~~)) (b) Instructions on the prequalification process and procedures;

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

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

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

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

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

((~~(8)~~)) (h) The estimated price range for the contract;

((~~(9)~~)) (i) Notification that the contract will be a fixed price contract;

(j) The form and amount of the required bid deposit and contract security;

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

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

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

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

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

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

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

((~~(17)~~)) (r) A requirement that the vessels be constructed within the boundaries of the state of Washington except that equipment furnished by the state and components, products, and systems that are standard manufactured items are not subject to the in-state requirement under this subsection (1)(r). For the purposes of this subsection (1)(r), "constructed" means the fabrication, by the joining together by welding or fastening of all steel parts from which the total vessel is constructed, including, but not limited to, all shell frames, longitudinals, bulkheads, webs, piping runs, wire ways, and ducting. "Constructed" also means the installation of all components and systems, including, but not limited to, equipment and machinery, castings, electrical, electronics, deck covering, lining, paint, and joiner work required by the contract. "Constructed" also means the interconnection of all equipment, machinery, and services, such as piping, wiring, and ducting; ((~~and~~

~~(18)~~)) (s) A requirement that all vessel design specifications and drawings must be complete and, when applicable, meet United States coast guard standards before vessel construction begins; and

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

(2) The department shall not issue a request for proposals for the procurement of vessels, except on a contract executed before the effective date of this section, without specific authorization to do so from the legislature. After receiving such specific authorization, any request for proposals issued by the department must comply with section 5 of this act.

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

(1) The Washington state institute for public policy must conduct a cost-benefit analysis of the state's ferry vessel procurement practices. This analysis must (a) compare in-state construction to construction at shipyards across the United States, (b) identify barriers to receiving three or more in-state bids to a request for proposals, and (c) recommend policies to encourage three or more in-state bidders to respond to a request for proposals. This analysis must be provided to the governor, the transportation committees of the legislature, and the department by December 1, 2016.

(2) In developing its engineer's estimate to procure a ferry vessel, the department must identify significant project cost drivers, including materials, labor, overhead, delivery, and profit.

(3) After July 1, 2017, if all responses to the initial request for proposals under RCW 47.60.814 are greater than five percent above the department's engineer's estimate for the project, the department must reject all proposals and issue a subsequent request for proposal that is not subject to RCW 47.60.814(1)(r).

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

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

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

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

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

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

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

(6) The department may:

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

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

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

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

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

(9)(a) To accommodate change orders on a fixed price contract, the department shall request that the legislative appropriation for any auto ferry construction project include a contingency in the following amounts:

(i) For the first vessel in any class of vessels designed to be powered by liquefied natural gas, the contingency may be no more than ten percent of the contract price;

(ii) For all other vessels, the contingency may be no more than five percent of the contract price.

(b) The contingency required by this subsection (9) must be identified in the funding request to the legislature and held in reserve until the office of financial management approves the expenditure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**