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**SUBSTITUTE HOUSE BILL 1502**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** House Transportation (originally sponsored by Representatives Wylie, Griffey, Ramel, Paul, Lekanoff, Berry, Ortiz-Self, Hackney, Harris-Talley, and Pollet)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to the procurement and design of electric ferries  
2 by counties; and adding new sections to chapter 36.32 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 36.32  
5 RCW to read as follows:

6 Any county may use the following competitive bidding procedures  
7 for procurement and design of electric ferries:

8 (1)(a) After bids that are submitted in response to a competitive  
9 solicitation process are reviewed by the awarding county, the  
10 awarding county may:

11 (i) Reject all bids and rebid or cancel the competitive  
12 solicitation;

13 (ii) Request best and final offers from responsive and  
14 responsible bidders; or

15 (iii) Award the purchase or contract to the lowest responsive and  
16 responsible bidder.

17 (b) The county may award one or more contracts from a competitive  
18 solicitation.

19 (2) In determining whether the bidder is a responsible bidder,  
20 the county must consider the following elements:

1 (a) The ability, capacity, and skill of the bidder to perform the  
2 contract or provide the service required;

3 (b) The character, integrity, reputation, judgment, experience,  
4 and efficiency of the bidder;

5 (c) Whether the bidder can perform the contract within the time  
6 specified;

7 (d) The quality of performance of previous contracts or services;

8 (e) The previous and existing compliance by the bidder with laws  
9 relating to the contract or services;

10 (f) Whether, within the three-year period immediately preceding  
11 the date of the bid solicitation, the bidder has been determined by a  
12 final and binding citation and notice of assessment issued by the  
13 department of labor and industries or through a civil judgment  
14 entered by a court of limited or general jurisdiction to have  
15 willfully violated, as defined in RCW 49.48.082, any provision of  
16 chapter 49.46, 49.48, or 49.52 RCW; and

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

19 (3) Due to the unique aspects of electric ferry design and the  
20 importance of well-integrated ship and shore equipment, in  
21 determining the lowest responsive and responsible bidder for the  
22 design and procurement of an electric ferry, a county may consider  
23 best value criteria, including but not limited to:

24 (a) Whether the bid satisfies the needs of the county as  
25 specified in the solicitation documents;

26 (b) Whether the bid encourages diverse contractor participation;

27 (c) Whether the bid provides competitive pricing, economies, and  
28 efficiencies;

29 (d) Whether the bid considers human health and environmental  
30 impacts;

31 (e) Whether the bid appropriately weighs cost and noncost  
32 considerations;

33 (f) Life-cycle cost;

34 (g) Project manager capabilities, including subcontractor  
35 management;

36 (h) Proposed approach to overall project plan, including  
37 integration, commissioning, and acceptance testing; and

38 (i) Demonstrated contractor and subcontractor technical knowledge  
39 or specific technical capabilities to meet technical elements of the  
40 design specified in the bid documents.

1 (4) The solicitation document must clearly set forth the  
2 requirements and criteria that the contract will apply in evaluating  
3 bid submissions. Before award of a contract, a bidder shall submit to  
4 the contracting county a signed statement in accordance with chapter  
5 5.50 RCW verifying under penalty of perjury that the bidder is in  
6 compliance with the responsible bidder criteria requirement of  
7 subsection (2)(f) of this section. A contracting county may award a  
8 contract in reasonable reliance upon such a sworn statement.

9 (5) The awarding county may at its discretion reject the bid of  
10 any contractor who has failed to perform satisfactorily on a previous  
11 contract with the county.

12 (6) After reviewing all bid submissions, a county may enter into  
13 negotiations with the lowest responsive and responsible bidder in  
14 order to determine if the bid may be improved. A county may not use  
15 this negotiation opportunity to permit a bidder to change a  
16 nonresponsive bid into a responsive bid.

17 (7) Except as provided in (a) of this subsection, all  
18 proceedings, records, contracts, and other public records relating to  
19 electric ferry design and procurement under this chapter shall be  
20 open to the inspection of any interested person, firm, or corporation  
21 in accordance with chapter 42.56 RCW.

22 (a) Trade secrets, as defined in RCW 19.108.010, or other  
23 proprietary information submitted by a bidder, offeror, or contractor  
24 in connection with electric ferry design and procurement under this  
25 chapter shall be exempt from disclosure under chapter 42.56 RCW  
26 pursuant to RCW 42.56.270 (1) and (2) if the bidder, offeror, or  
27 contractor specifically states in writing at the time specific  
28 identified materials or information is submitted to the county the  
29 reasons why protection is necessary and identifies the data or  
30 materials to be protected, and the county concurs that disclosure  
31 would harm the competitive position of the entity submitting the  
32 material and that disclosure would not serve public interest in  
33 ensuring fair and open competition for procurement.

34 (b) All documents related to a procurement under this act are  
35 exempt from disclosure until the notification of the highest scoring  
36 finalist is made or the selection process is terminated.

37 (8) Where critical equipment selections can be made to mature a  
38 ferry design, reducing cost and performance risk in shipyard  
39 contracts, these selections may be made and the chosen vendors  
40 specified by name in bid specifications without allowing

1 substitutions. Counties and their consultants may evaluate cost and  
2 noncost considerations when making these selections provided that the  
3 selection is made in good faith to identify the equipment best suited  
4 to the county's needs.

5 (9) For purposes of this section, a county may designate a public  
6 works department as an alternative to the purchasing department as  
7 the lead agency for the design and procurement of electric ferries.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.32  
9 RCW to read as follows:

10 To increase small business participation in ferry vessel  
11 procurement, the Washington state department of transportation's  
12 office of equal opportunity shall establish contract goals for county  
13 electric ferry vessel procurement.

14 (1) The contract goal is defined as a percentage of the contract  
15 award amount that the prime contractor must meet by subcontracting  
16 with small business enterprises.

17 (2) Small business enterprises intending to benefit from the  
18 small business enterprise enforceable goals program established in  
19 this section must meet the definition of "small business" in RCW  
20 39.26.010.

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