

**RCW 43.52.567 Contracts for materials or work through competitive negotiation—Renewable electrical energy generation projects.** (1) A joint operating agency with an executive board formed under RCW 43.52.374 may enter into contracts through competitive negotiation under subsection (3) of this section for materials, equipment, supplies, or work to be performed in support of siting, constructing, developing, or deploying a renewable electrical energy generation project, if the managing director or a designee determines in writing and the executive board finds that execution of a contract under this section will accomplish project completion or operation more economically than sealed bids.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Professional competence" means the totality of demonstrated experience, knowledge, skills, proficiency, and abilities required to successfully perform the contract.

(b) "Qualified hydropower" means the energy produced either: (i) As a result of modernizations or upgrades made after June 1, 1998, to hydropower facilities operating on May 8, 2001, that have been demonstrated to reduce the mortality of anadromous fish; or (ii) by run of the river or run of the canal hydropower facilities that are not responsible for obstructing the passage of anadromous fish.

(c) "Renewable electrical energy generation project" means electrical generation facilities that are fueled by: (i) Wind; (ii) solar energy; (iii) geothermal energy; (iv) landfill gas; (v) wave or tidal action; (vi) gas produced during the treatment of wastewater; (vii) qualified hydropower; or (viii) biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(d) "Responsible offerors" means offerors who possess necessary management and financial resources, experience, organization, and the ability, capacity, and skill to successfully perform the contract.

(3) The selection of a contractor shall be made in an open public meeting, as part of a public record, and in accordance with the following procedures:

(a) Proposals shall be solicited through a request for proposals, which shall state the requirements to be met. Responses shall describe the professional competence of the offeror, the technical merits of the offer, and the price.

(b) The request for proposals shall be given adequate public notice in the same manner as for sealed bids.

(c) As provided in the request for proposals, the joint operating agency shall specify at a preproposal conference specific contract requirements, which may include but are not limited to: Schedule, managerial, and staffing requirements, productivity and production levels, technical expertise, approved project quality assurance procedures, and time and place for submission of proposals. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all potential offerors.

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be open for public inspection after contract award.

(e) As provided in the request for proposals, invitations shall be sent to all responsible offerors who submit proposals to attend discussions for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all offerors. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(f) The joint operating agency shall execute a contract with the responsible offeror whose proposal is determined in writing to be the most advantageous to the joint operating agency and the state taking into consideration the requirements set forth in the request for proposals. The contract file shall contain the basis on which the successful offeror is selected. The joint operating agency shall conduct a briefing conference on the selection if requested by an offeror.

(g) The contract may be fixed price or cost-reimbursable, in whole or in part, but not cost-plus-percentage-of-cost.

(h) The joint operating agency shall retain authority and responsibility for inspection, testing, and compliance with applicable regulations or standards of any state or federal governmental agency.  
[2006 c 176 § 1.]