

SENATE BILL REPORT

2SHB 1384

As Reported By Senate Committee On:
Government Operations & Elections, February 22, 2006

Title: An act relating to construction and operation of renewable energy projects by joint operating agencies.

Brief Description: Authorizing the construction and operation of renewable energy projects by joint operating agencies.

Sponsors: House Committee on Technology, Energy & Communications (originally sponsored by Representatives Haler, B. Sullivan, Morris, Crouse, P. Sullivan, Chase and Hudgins).

Brief History: Passed House: 2/03/06, 94-2.

Committee Activity: Government Operations & Elections: 02/20/06, 2/22/06 [DP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Roach, Ranking Minority Member; Fairley, Haugen, McCaslin, Mulliken and Pridemore.

Minority Report: That it be referred without recommendation.

Signed by Senators Benton and Kline.

Staff: Diane Smith (786-7410)

Background: Joint operating agencies (JOAs) are formed by cities and public utility districts that join together to develop electricity generation projects. The only JOA currently operating is Energy Northwest, which operates and maintains the state's only nuclear powered electrical generation facility. Energy Northwest has recently developed a wind power generation site, a solar power demonstration site, and is exploring generation using biomass and fuel cells.

A JOA must use a sealed bid process to purchase materials, equipment, and supplies costing more than \$10,000 or to order work for the construction of generating facilities and associated facilities costing more than \$10,000.

A JOA may use a competitive negotiation process for contracts to acquire materials, equipment, and supplies or for work performed during the commercial operation of a nuclear generating project. This process may be used where an existing contract is in default or is terminated or if the managing director and the executive board of the JOA find that the project will be completed or will operate more economically than using the sealed bid process.

The negotiated bid process for selecting a contractor includes several steps. The JOA issues a request for proposal along with public notice similar to that of the sealed bid process. A pre-bid conference is held to discuss and clarify the contract requirements in the request for

proposal. Any inquiries from potential offerors and the responses from the JOA are given to all potential offerors. The contract requirements may be refined during this process.

Once offerors submit proposals, further discussion and clarification takes place with each offeror. Proposals may be revised in order to obtain the best and final offers. Proposals must be opened and discussed in a manner that protects their disclosure to competing offerors during the negotiation process.

The JOA selects the offeror's proposal that is most advantageous to the JOA and the state. The basis of the final selection must be part of the contract file. After a contract is awarded, a register of proposals is available for public inspection. Any offeror may request a briefing conference on the selection.

The contract may be a fixed price or cost-reimbursable, but not a cost plus percentage of cost.

Summary of Bill: A JOA's authorization to use a competitive negotiation process is extended to the acquisition of materials, equipment, and supplies, or for work performed for the siting, construction, or deploying of a renewable electrical energy generation project. The competitive negotiation process may be used if the managing director and the executive board of the operating agency find that the project's operation or completion will be more economical than using the sealed bid process.

The competitive negotiation procedures for selecting a contractor are the same as those for selecting a contractor for a nuclear powered electrical generating facility. In addition, the selection of a contractor shall be made in an open public meeting as part of the public record.

A renewable electrical generation project is a generation facility fueled by wind, solar energy, geothermal energy, landfill gas, wave or tidal action, gas produced by wastewater treatment, qualified hydropower, or biomass energy.

Professional competence is defined as the offeror's totality of demonstrated experience, knowledge, skills, proficiency, and abilities to successfully perform the contract.

Responsible offerors are defined as offerors who possess necessary management and financial resources, experience, organization, and the ability, capacity, and skill to successfully perform the contract.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Competitive negotiation is a technique that may not result in the lowest proposal but does assure mutual understanding between the bidder and the agency. The financial community is now aware of the debacle: in competitive negotiation, we must sell our output. This is a clear, public process with clarifying, fact-finding discussions. This bill codifies 25 years of success and is in the best interest of Energy Northwest and the public.

Testimony Against: All the purported advantages of competitive negotiation can be included in design-bid-build. Competitive negotiation allows preferences and bid-shopping. This allows revision to the contract during the negotiation of the project. All bidders could be interested in the "new" project but do not get a chance to participate at that juncture. The terms are extremely subjective. The Capital Projects Review Board has not had a chance to review this yet. This closed-door, bid-shopping process finds its way down the food chain to construction workers on the site. The wind power project has these significant problems. When you drive the cost down, highly skilled electrical workers are substituted for less skilled workers. There is no protest possible.

Who Testified: PRO: Jim Rowland and Michael Wilson of Energy Northwest CON: Richard King, IBEW; David Johnson, Washington State Building Trades; Michael Transue, Associated General Contractors.