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SENATE BILL 5291

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State of Washington

59th Legislature

2005 Regular Session

By Senators Poulsen, Morton, Fraser, Mulliken and Kohl-Welles

Read first time 01/19/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to construction and operation of renewable energy  
2 projects by joint operating agencies; and adding a new section to  
3 chapter 43.52 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.52 RCW  
6 to read as follows:

7 (1) A joint operating agency may enter into contracts through  
8 competitive negotiation under subsection (3) of this section for  
9 materials, equipment, supplies, or work to be performed in support of  
10 siting, constructing, developing, or deploying a renewable electrical  
11 energy generation project, if the managing director or a designee  
12 determines in writing and the executive board finds that execution of  
13 a contract under this section will accomplish project completion or  
14 operation more economically than sealed bids.

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

17 (a) "Renewable electrical generation project" means electrical  
18 generation facilities that are fueled by: (i) Wind; (ii) solar energy;  
19 (iii) geothermal energy; (iv) landfill gas; (v) wave or tidal action;

1 (vi) gas produced during the treatment of wastewater; (vii) qualified  
2 hydropower; or (viii) biomass energy based on animal waste or solid  
3 organic fuels from wood, forest, or field residues, or dedicated energy  
4 crops that do not include wood pieces that have been treated with  
5 chemical preservatives such as creosote, pentachlorophenol, or  
6 copper-chrome-arsenic.

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

13 (3) The selection of a contractor shall be made in accordance with  
14 the following procedures:

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

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

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

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

32 (e) As provided in the request for proposals, invitations shall be  
33 sent to all responsible offerors who submit proposals to attend  
34 discussions for the purpose of clarification to assure full  
35 understanding of, and responsiveness to, the solicitation requirements.  
36 Any inquiries and responses thereto shall be confirmed in writing and  
37 shall be sent to all offerors. Offerors shall be accorded fair and  
38 equal treatment with respect to any opportunity for discussion and

1 revision of proposals, and such revisions may be permitted after  
2 submissions and prior to award for the purpose of obtaining best and  
3 final offers. In conducting discussions, there shall be no disclosure  
4 of any information derived from proposals submitted by competing  
5 offerors.

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

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

16 (h) The joint operating agency shall retain authority and  
17 responsibility for inspection, testing, and compliance with applicable  
18 regulations or standards of any state or federal governmental agency.

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