

HOUSE BILL REPORT

2SHB 1384

As Passed Legislature

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

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/19/06 [DP2S].

Floor Activity:

Passed House: 2/3/06, 94-2.

Passed Senate: 3/3/06, 32-14.

Passed Legislature.

<p>Brief Summary of Second Substitute Bill</p> <ul style="list-style-type: none">• Authorizes joint operating agencies to use a competitive negotiation process for siting, construction, and operation of renewable energy projects.
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HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; Kilmer, Vice Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Ericks, Hankins, Hudgins, P. Sullivan, Sump, Takko and Wallace.

Staff: Scott Richards (786-7156).

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 finds 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 inquires 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 Second Substitute 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 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.

A definition of "professional competence" is added to clarify that responses to a joint operating agency's requests for proposal must describe the offeror's "totality of demonstrated experience, knowledge, skills, proficiency, and abilities to successfully perform the contract."

A definition of "responsible offerors" is added to clarify that offerors who possess necessary management and financial resources, experience, organization, and the ability, capacity, and skill to successfully perform the contract are "responsible offerors" who will, consistent with the JOA's request for proposals, be invited to attend discussions to clarify solicitation requirements in the request for proposals.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is a good tool to promote and develop renewable energy. This bill is a necessary tool because the Bonneville Power Authority cannot own generating facilities. If public power is to be able to provide low-cost power to all its utilities, these resources need to be owned by public power. Renewable energy is where this state is going and this bill will allow our company to become a leader in the field. The use of competitive negotiated contracting has been used successfully for the last 20 years without a single allegation about fairness.

Testimony Against: The statutory authority already exist for JOAs to use the request for proposals and requests for quotes processes are available and appropriate. Allowing bidding and contract negotiations to occur outside the public view is bad public policy and could lead to abuse. Competitive negotiation may be appropriate for highly advanced technologies such as nuclear power, but it may not be appropriate for renewable energy. Confidentiality of support bid documents is already protected through existing legislation. Lowest possible bidding process is the best way to ensure the best price and process. There is concern that a public agency will select who it wants rather than leaving it to the market place.

Persons Testifying: (In support) Representative Larry Haler, prime sponsor; Jim Rowland and Michael Wilson, Energy Northwest.

(Opposed) Michael Transu, Association of General Contractors; and Larry Stevens, Washington Contractors Association and the Northwest Electrical Contractors Association.

Persons Signed In To Testify But Not Testifying: None.