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SECOND SUBSTITUTE HOUSE BILL 1384

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State of Washington

59th Legislature

2006 Regular Session

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

READ FIRST TIME 01/24/06.

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 with an executive board formed under  
8 RCW 43.52.374 may enter into contracts through competitive negotiation  
9 under subsection (3) of this section for materials, equipment,  
10 supplies, or work to be performed in support of siting, constructing,  
11 developing, or deploying a renewable electrical energy generation  
12 project, if the managing director or a designee determines in writing  
13 and the executive board finds that execution of a contract under this  
14 section will accomplish project completion or operation more  
15 economically than sealed bids.

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

18 (a) "Professional competence" means the totality of demonstrated

1 experience, knowledge, skills, proficiency, and abilities required to  
2 successfully perform the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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