

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature((-));

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

(2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency.

(3) "Action" means the transaction of the official business of a public agency by a governing body including but not limited to a collective decision made by a majority of the members of a governing body, a collective commitment or promise by a majority of the members of a governing body to make a positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

(4) "Meeting" means meetings at which action is taken.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 10, 1982.

Passed the House April 10, 1982.

Approved by the Governor April 20, 1982.

Filed in Office of Secretary of State April 20, 1982.

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CHAPTER 44

[Engrossed Senate Bill No. 4995]

JOINT OPERATING AGENCIES—CONTRACT PROCEDURES

AN ACT Relating to joint operating agencies; adding new sections to chapter 43.52 RCW; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Section 1. For the awarding of a contract to purchase any item or items of materials, equipment, or supplies in an amount exceeding five thousand dollars but less than seventy-five thousand dollars, exclusive of sales tax, a joint operating agency may, in lieu of sealed bids, authorize by operating agency resolution a procedure for securing telephone and/or written quotations from at least five vendors, where practical, and for awarding contracts for purchase of materials, equipment, or supplies to the lowest responsible bidder. The procedure shall establish a procurement roster, which shall consist of suppliers and manufacturers who may supply materials or equipment to the operating agency, and shall provide for solicitations which will equitably distribute opportunity for bids among suppliers and manufacturers on the roster. Immediately after the award is made, the bid quotations obtained shall be recorded and shall be posted or otherwise made available for public inspection and copying pursuant to chapter 42.17 RCW at the office of the operating agency or any other officially designated location. Waiver of the deposit or bid bond required for sealed bids may be authorized by the operating agency in securing the bid quotations.

**NEW SECTION.** Sec. 2. When a joint operating agency constructing or operating a nuclear generating project and associated facilities determines in writing that an emergency endangers the public safety or threatens property damage or that serious financial injury would result if materials, supplies, equipment, or work are not obtained by a certain time, and they cannot be contracted for by that time by means of sealed bids, the operating agency may, in lieu of sealed bids, purchase materials, equipment, or supplies or order work by contract in any amount necessary, after having taken precaution to secure a responsive proposal at the lowest price practicable under the circumstances: **PROVIDED**, That for the purposes of this section the term "serious financial injury" shall mean that the costs attributable to the delay caused by contracting by sealed bids exceed the cost of materials, supplies, equipment or work to be obtained.

**NEW SECTION.** Sec. 3. When a joint operating agency constructing or operating a nuclear generating project and associated facilities on the project site determines in writing that it is impracticable to secure competition for required materials, equipment, or supplies, it may purchase the materials, equipment, or supplies without competition. The term "impracticable to secure competition" shall include:

(1) When property or services can be obtained from only one person or firm (single source of supply).

(2) When competition is precluded because of the existence of patent rights, copyrights, or secret processes.

(3) When parts or components being procured as replacement parts in support of equipment specially designed by the manufacturer and where data available is not adequate to assure that the part or component will

perform the same function in the equipment as the part or component it is to replace.

**NEW SECTION.** Sec. 4. When a joint operating agency constructing or operating a nuclear generating project determines in writing that it is impracticable to draft an invitation for bids with definitive specifications or any other adequately detailed description of required materials, equipment, or supplies sufficient to determine whether a competitive sealed bid is responsive, execution of a contract shall follow the procedure required in this section.

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

(2) The request for proposals shall be sent to all bidders prequalified under section 5 of this act and shall be given adequate public notice in the same manner as for sealed bids under RCW 54.04.070.

(3) As provided in the request for proposals, the operating agency shall specify at a preproposal conference the contract requirements in the request for proposal, which may include but are not limited to: Schedule, managerial and staffing requirements, productivity and production levels, 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.

(4) 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.

(5) 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.

(6) The operating agency shall execute a contract with the responsible offeror whose proposal is determined in writing to be the most advantageous to the operating agency 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 operating agency shall conduct a briefing conference on the selection if requested by an offeror.

(7) The contract may be fixed price or cost-reimbursable, in whole or in part, but not cost-plus-percentage-of-cost: PROVIDED, That if it is cost-reimbursable, it shall meet the requirements of RCW 43.52.505.

**NEW SECTION.** Sec. 5. A joint operating agency shall require that bids upon any construction or improvement of any nuclear generating project and associated facilities shall be made upon the contract bid form supplied by the operating agency, and in no other manner. The operating agency may, before furnishing any person, firm, or corporation desiring to bid upon any work with a contract bid form, require from the person, firm, or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of the person, firm, or corporation in performing work. The questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgement of deeds and shall be submitted once a year or at such other times as the operating agency may require. Whenever the operating agency is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement or whenever the operating agency determines that the person, firm, or corporation does not meet all of the requirements set forth in this section, it may refuse to furnish the person, firm, or corporation with a contract bid form and any bid of the person, firm, or corporation must be disregarded. The operating agency shall require that a person, firm, or corporation have all of the following requirements in order to obtain a contract form:

(1) Adequate financial resources, the ability to secure these resources, or the capability to secure a one hundred percent payment and performance bond;

(2) The necessary experience, organization, and technical qualifications to perform the proposed contract;

(3) The ability to comply with the required performance schedule taking into consideration all of its existing business commitments;

(4) A satisfactory record of performance, integrity, judgment, and skills; and

(5) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

The refusal shall be conclusive unless appealed to the superior court of the county where the operating agency is situated or Thurston county within fifteen days, which appeal shall be heard summarily within ten days after the appeal is made and on five days' notice thereof to the operating agency.

The prevailing party in such litigation shall be awarded its attorney fees and costs.

The operating agency shall not be required to make available for public inspection or copying under chapter 42.17 RCW financial information provided under this section.

**NEW SECTION.** Sec. 6. (1) In lieu of sealed bids in constructing or operating a nuclear generating project and associated facilities, a joint operating agency may solicit quotations and execute a contract for work under this section for a defaulted contract or for a contract terminated in whole or in part, or to consolidate work under several contracts into one contract: **PROVIDED**, That the operating agency shall determine in writing that execution of a contract under this section is less costly to the project than sealed bids, or will substantially expedite completion of the project.

(2) The operating agency shall specify at a prequotation conference the contract requirements in the solicitation, which may include but are not limited to: Schedule, managerial and staffing requirements, productivity and production levels, approved project quality assurance procedures, and time and place for submission of quotations. The solicitation shall be sent to all bidders prequalified for the work under section 5 of this act. The operating agency may issue such solicitation and shall conduct a prequotation conference prior to default or termination of contract(s) to be replaced, to the extent necessary to accomplish orderly transition of work assignments. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all offerors.

During the prequotation conference, the operating agency shall define in writing the roles, responsibilities, and obligations of persons under the contract and all persons under defaulted, terminated, or consolidated contracts.

(3) After quotations are received by the operating agency, invitations shall be sent to all responsible offerors who submit quotations to attend discussions for the purpose of clarification to assure full understanding of, and responsiveness to, the requirements of the operating agency. 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 quotations, 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 quotations submitted by competing offerors.

(4) The operating agency shall execute a contract with the responsible offeror whose quotation is determined in writing to be the most advantageous to the operating agency. The contract file shall contain the basis on which the successful offeror is selected. The operating agency shall conduct a briefing conference on the selection if requested by an offeror.

(5) The contract may be fixed price or cost-reimbursable, in whole or in part, but not cost-plus-percentage-of-cost: **PROVIDED**, That if it is cost-reimbursable, it shall meet the requirements of RCW 43.52.505.

(6) In accordance with the contract terms, the operating agency shall give any defaulted or terminated contractor notice and pay the contractor for work performed and termination costs.

**NEW SECTION.** Sec. 7. (1) Except as provided otherwise in this chapter, a joint operating agency shall purchase any item or items of materials, equipment or supplies, the estimated cost of which is in excess of five thousand dollars exclusive of sales tax, or order work for construction of generating projects and associated facilities, the estimated cost of which is in excess of ten thousand dollars exclusive of sales tax, by contract in accordance with RCW 54.04.070 and 54.04.080, which require sealed bids for contracts.

(2) When a joint operating agency chooses to use one or more of the exceptions to sealed bid contracting specified in this chapter, the agency shall certify to the senate and house committees on energy and utilities and the legislative budget committee in writing within thirty days after the contract is signed, that such contract is in the public interest, state the reason or reasons why, and indicate the estimated cost savings or schedule improvement to the project compared to contracting for the same material, supplies, equipment or work through completion of work as contracted, including termination costs, or through sealed bids.

**NEW SECTION.** Sec. 8. Sections 1 through 7 of this act shall expire on December 31, 1987, or on the date that construction is completed on those nuclear generating projects which are under construction by any joint operating agency on January 1, 1982, whichever is sooner.

**NEW SECTION.** Sec. 9. Sections 1 through 8 of this act are each added to chapter 43.52 RCW.

**NEW SECTION.** Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 11. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 9, 1982.

Passed the House April 10, 1982.

Approved by the Governor April 20, 1982.

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## CHAPTER 45

[Engrossed Senate Bill No. 4705]

### STATE GOVERNMENT—CREDIT CARD PURCHASES

AN ACT Relating to state purchasing; and adding a new section to chapter 43.19 RCW.

Be it enacted by the Legislature of the State of Washington: