

NEW SECTION. Sec. 11. Section 82.04.275, chapter 15, Laws of 1961, section 12, chapter 149, Laws of 1967 ex. sess. and RCW 82.04.275 are each repealed.

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 July 1, 1981, except section 9 of this act shall take effect September 1, 1981, sections 7 and 8 of this act shall take effect October 1, 1981, and section 10 of this act shall take effect July 1, 1983.

Passed the House April 26, 1981.

Passed the Senate April 26, 1981.

Approved by the Governor May 14, 1981.

Filed in Office of Secretary of State May 14, 1981.

## CHAPTER 173

[Second Substitute House Bill No. 338]

### JOINT OPERATING AGENCIES, NUCLEAR GENERATING PROJECTS— NEGOTIATED CONTRACTS

AN ACT Relating to operating agencies; amending section 2, chapter 28, Laws of 1977 ex. sess. and RCW 43.52.490; adding new sections to chapter 43.52 RCW; repealing section 1, chapter 28, Laws of 1977 ex. sess. and RCW 43.52.480; prescribing penalties; providing expiration dates; and declaring an emergency.

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

Section 1. Section 2, chapter 28, Laws of 1977 ex. sess. and RCW 43.52.490 are each amended to read as follows:

An operating agency shall have the power to ~~((make any amendment to))~~ amend a contract previously let for the construction of ~~((the project))~~ a nuclear generating project and associated facilities, by change order or other writing, if ~~((it finds))~~ the managing director certifies to the executive board or executive committee and the executive board or executive committee finds in an open public meeting that:

(1) Such amendment is necessary to comply with applicable regulations or standards of any state or federal governmental agency, or with any change in plans or specifications recommended by the architect-engineer in charge of the project or under his (its) direction or by the managing director for the purpose of improving the safety or feasibility of the project or expediting completion of the project on the most advantageous terms in the public interest~~((:PROVIDED, That))~~;

(2) Such amendment does not provide for a type of construction ~~((of a project))~~ basically different from that provided for in such contract;

(3) The plans and specifications for work to be performed under the contract amendment are at least fifty percent complete; and

(4) Such amendment specifies that the contractor will be compensated for actual work performed valued at its contracted cost.

Nothing in this 1981 act may be construed to bear on the validity of any contract amendment executed under the law as it existed prior to the effective date of this 1981 act or to affect any judicial proceeding arising from actions taken under such law.

This section 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 the effective date of this act, whichever is sooner.

NEW SECTION. Sec. 2. There is added to chapter 43.52 RCW a new section to read as follows:

It is the long-established policy of the state of Washington that competitive bidding for construction and procurement contracts for public improvements is the best practice and is in the public interest in assuring the citizens of the state the lowest cost in obtaining these improvements. However, the legislature declares that for certain work during the final stages of construction and startup of a nuclear generating project and associated facilities it will permit award of contracts through competitive negotiation when competitive bidding is not practicable or not advantageous.

The legislature intends that negotiated contracts be limited to the final stages of construction and startup of a nuclear generating project and associated facilities.

NEW SECTION. Sec. 3. There is added to chapter 43.52 RCW a new section to read as follows:

In addition to the powers of an operating agency under other provisions of law, an operating agency may enter into a contract for work to be performed during the final stages of construction and startup through negotiation without competitive bids only if all the following conditions are first satisfied:

(1) The executive board or executive committee of the operating agency has adopted a procedure to determine when a project has reached the final stages of construction and startup. A project shall not be considered to have reached the final stages of completion and startup unless the managing director certifies that the project is approximately eighty percent or more complete calculated by the method used to determine this percentage for the purpose of disclosing relevant information under 15 U.S.C. Sec. 77 et seq. as existing on the effective date of this act.

(2) The managing director certifies in writing to the executive board or executive committee and the executive board or executive committee finds that executing a negotiated contract will accomplish completion and startup more economically, expeditiously, or safely than executing a competitively bid contract.

(3) The selection of a contractor was made in accordance with procedures adopted by the executive board or executive committee requiring competitive proposals, the request for which states the relative importance of the various evaluation factors, including professional competence of offerors, the technical merits of offers, and the price.

(4) The joint operating agency retains authority and responsibility for inspection, testing, and compliance with applicable regulations or standards of any state or federal governmental agency.

(5) The operating agency has defined in writing the roles, responsibilities, and obligations of the new contractor and any contractor who commenced any work to be reworked, performed by, or completed by the new contractor.

NEW SECTION. Sec. 4. There is added to chapter 43.52 RCW a new section to read as follows:

An operating agency may provide in any negotiated contract for payment of cost and compensation in the form of reimbursement of actual contractor's costs recognized as allowable under the contract, plus a profit or fee as set forth in the contract, only if there is compliance with the following requirements:

(1) The managing director certifies to the executive board or executive committee that it is not feasible to determine in advance what a fixed or unit contract price should be for the work, materials, or equipment to be covered by the proposed contract, either because of difficulty in defining and detailing the scope of the work to be performed, the materials, or equipment required;

(2) The executive board or executive committee finds in an open public meeting held under chapter 42.30 RCW that the contract is likely to be less costly than contracts of other types or that it is impracticable to obtain the work, materials, or equipment required except under the contract;

(3) The contract provides that:

(a) The contractor shall submit cost or pricing data and shall certify that, to the best of its knowledge and belief, the cost and pricing data submitted were accurate, complete, and current as of a mutually agreed upon date which is prior to the pricing of the negotiated contract;

(b) The operating agency and the state auditor shall audit the books and records of the contractor, its subcontractors under the contract, or any person who has submitted cost or pricing data in connection with the obtaining of the contract or the performance of the contract as necessary to determine compliance with relevant provisions of law;

(c) The contract price or compensation, including any profit or fee, shall be adjusted to exclude any significant sum by which the price was increased because contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties; and

(d) Notice is given to the contractor that the provisions of chapters 42-.20 and 42.23 RCW apply to employees and officers of the operating agency; and

(4) Standards or guidelines are set forth in the contract for the determination of what the compensation payable to the contractor shall be, which shall not be based upon cost-plus-a-percentage-of-cost.

NEW SECTION. Sec. 5. There is added to chapter 43.52 RCW a new section to read as follows:

The administrative auditor shall file with the executive board or executive committee of the operating agency a quarterly report relating to compliance by the operating agency with sections 1 through 4 of this act. The administrative auditor shall file copies of the report with the legislative budget committee, which shall file a copy of each report with the respective chairpersons of the energy and utilities committees of the senate and house of representatives under RCW 43.52.378.

NEW SECTION. Sec. 6. There is added to chapter 43.52 RCW a new section to read as follows:

All of the provisions of Titles 9 and 9A RCW apply to actions of a joint operating agency.

NEW SECTION. Sec. 7. Section 1, chapter 28, Laws of 1977 ex. sess. and RCW 43.52.480 are each repealed.

NEW SECTION. Sec. 8. Sections 2 through 5 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 the effective date of this act, whichever is sooner.

NEW SECTION. Sec. 9. 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. 10. 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 House April 23, 1981.

Passed the Senate April 20, 1981.

Approved by the Governor May 14, 1981.

Filed in Office of Secretary of State May 14, 1981.