

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 2239**

Chapter 80, Laws of 1994

53rd Legislature  
1994 Regular Session

PRISON CONSTRUCTION--PUBLIC WORKS CONTRACTS

EFFECTIVE DATE: 3/23/94

Passed by the House February 10, 1994  
Yeas 51 Nays 42

BRIAN EBERSOLE

**Speaker of the  
House of Representatives**

Passed by the Senate March 3, 1994  
Yeas 47 Nays 1

JOEL PRITCHARD

**President of the Senate**

Approved March 23, 1994

MIKE LOWRY

**Governor of the State of Washington**

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2239** as passed by the House of Representatives and the Senate on the dates hereon set forth.

MARILYN SHOWALTER

**Chief Clerk**

FILED

March 23, 1994 - 9:41 a.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 2239**

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Passed Legislature - 1994 Regular Session

**State of Washington                      53rd Legislature                      1994 Regular Session**

**By** House Committee on Capital Budget (originally sponsored by Representatives Wang, Ogden, Sehlin, Silver, Jones, King, Karahalios, Eide and Springer; by request of Department of Corrections and Department of General Administration)

Read first time 02/04/94.

1            AN ACT Relating to innovative prison construction; amending RCW  
2 39.04.210, 39.04.220, and 39.04.230; and declaring an emergency.

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

4            **Sec. 1.** RCW 39.04.210 and 1991 c 130 s 1 are each amended to read  
5 as follows:

6            The legislature recognizes that fair and open competition is a  
7 basic tenet of public works procurement, that such competition reduces  
8 the appearance of and opportunity for favoritism and inspires public  
9 confidence that contracts are awarded equitably and economically, and  
10 that effective monitoring mechanisms are important means of curbing any  
11 improprieties and establishing public confidence in the process by  
12 which contractual services are procured. The legislature finds that  
13 there ~~((exists an urgent))~~ will continue to exist a need for additional  
14 correctional facilities due to the inadequate capacity of existing  
15 correctional facilities to accommodate the ~~((present size and))~~  
16 predicted growth of offender populations and that it is necessary to  
17 provide public works contract options for the effective construction  
18 and repair of additional department of corrections facilities. ~~((The~~  
19 ~~legislature further finds that both the need and the urgency to~~

1 ~~construct additional state correctional facilities requires the~~  
2 ~~temporary use of more expedient methods for awarding state construction~~  
3 ~~contracts for correctional facilities.))~~

4       **Sec. 2.** RCW 39.04.220 and 1991 c 130 s 2 are each amended to read  
5 as follows:

6       (1) In addition to currently authorized methods of public works  
7 contracting, and in lieu of the requirements of RCW 39.04.010 and  
8 39.04.020 through 39.04.060, capital projects funded for over ten  
9 million dollars (~~appropriated and~~) authorized by the legislature for  
10 the department of corrections (~~in the 1989-91 biennium at the McNeil~~  
11 ~~Island corrections center, the Clallam Bay corrections center, the~~  
12 ~~construction of new correctional facilities under the authority of the~~  
13 ~~secretary of corrections including drug camps; work camps; a new medium~~  
14 ~~security prison and such other correctional)) to construct or repair  
15 facilities ((as may be authorized by the legislature during the  
16 biennium ending June 30, 1993,)) may be accomplished under contract  
17 using the general contractor/construction manager method described in  
18 this section. In addition, the general contractor/construction manager  
19 method may be used for up to two demonstration projects under ten  
20 million dollars for the department of corrections. Each demonstration  
21 project shall aggregate capital projects authorized by the legislature  
22 at a single site to total no less than three million dollars with the  
23 approval of the office of financial management. The department of  
24 general administration shall present its plan for the aggregation of  
25 projects under each demonstration project to the oversight advisory  
26 committee established under subsection (2) of this section prior to  
27 soliciting proposals for general contractor/construction manager  
28 services for the demonstration project.~~

29       (2) For the purposes of this section, "general contractor/  
30 construction manager" means a firm with which the department of general  
31 administration has selected and negotiated a maximum allowable  
32 construction cost to be guaranteed by the firm, after competitive  
33 selection through a formal advertisement, and competitive bids to  
34 provide services during the design phase that may include life-cycle  
35 cost design considerations, value engineering, scheduling, cost  
36 estimating, constructability, alternative construction options for cost  
37 savings, and sequencing of work, and to act as the construction manager  
38 and general contractor during the construction phase. The department

1 of general administration shall establish an independent oversight  
2 advisory committee with representatives of interest groups with an  
3 interest in this subject area, the department of corrections, and the  
4 private sector, to review selection and contracting procedures and  
5 contracting documents. The oversight advisory committee shall discuss  
6 and review the progress of the demonstration projects. The general  
7 contractor/construction manager method is limited to (~~contracts~~  
8 ~~signed~~) projects authorized on or before July 1, ((1996)) 1997.

9 ((+2)) (3) Contracts for the services of a general contractor/  
10 construction manager awarded under the authority of this section shall  
11 be awarded through a competitive process requiring the public  
12 solicitation of proposals for general contractor/construction manager  
13 services. Minority and women enterprise total project goals shall be  
14 specified in the bid instructions to the general contractor/  
15 construction manager finalists. The director of general administration  
16 is authorized to include an incentive clause in any contract awarded  
17 under this section for savings of either time or cost or both from that  
18 originally negotiated. No incentives granted shall exceed five percent  
19 of the maximum allowable construction cost. The director of general  
20 administration or his or her designee shall establish a committee to  
21 evaluate the proposals considering such factors as: Ability of  
22 professional personnel; past performance in negotiated and complex  
23 projects; ability to meet time and budget requirements; location;  
24 recent, current, and projected work loads of the firm; and the concept  
25 of their proposal. After the committee has selected the most qualified  
26 finalists, these finalists shall submit sealed bids for the percent  
27 fee, which is the percentage amount to be earned by the general  
28 contractor/construction manager as overhead and profit, on the  
29 estimated maximum allowable construction cost and the fixed amount for  
30 the detailed specified general conditions work. The maximum allowable  
31 construction cost may be negotiated between the department of general  
32 administration and the selected firm after the scope of the project is  
33 adequately determined to establish a guaranteed contract cost for which  
34 the general contractor/construction manager will provide a performance  
35 and payment bond. The guaranteed contract cost includes the fixed  
36 amount for the detailed specified general conditions work, the  
37 negotiated maximum allowable construction cost, the percent fee on the  
38 negotiated maximum allowable construction cost, and sales tax. If the  
39 department of general administration is unable to negotiate a

1 satisfactory maximum allowable construction cost with the firm selected  
2 that the department of general administration determines to be fair,  
3 reasonable, and within the available funds, negotiations with that firm  
4 shall be formally terminated and the department of general  
5 administration shall negotiate with the next low bidder and continue  
6 until an agreement is reached or the process is terminated. If the  
7 maximum allowable construction cost varies more than fifteen percent  
8 from the bid estimated maximum allowable construction cost due to  
9 requested and approved changes in the scope by the state, the percent  
10 fee shall be renegotiated. All subcontract work shall be competitively  
11 bid with public bid openings. Specific ~~((goals))~~ contract requirements  
12 for women and minority enterprise~~((s))~~ participation shall be specified  
13 in each subcontract bid package that ~~((responsive bidders will have to~~  
14 ~~meet or))~~ exceeds ten percent of the department's estimated project  
15 cost. All subcontractors who bid work over ~~((one))~~ two hundred  
16 thousand dollars shall post a bid bond and the awarded subcontractor  
17 shall provide a performance and payment bond for their contract amount  
18 if required by the general contractor/construction manager. ~~((The))~~  
19 Bidding ~~((of))~~ on subcontract work by the general contractor/  
20 construction manager or its subsidiaries is prohibited ~~((but it)).~~ The  
21 general contractor/construction manager may negotiate with the low-  
22 responsive bidder only in accordance with RCW 39.04.015 or, if  
23 unsuccessful in such negotiations, rebid ~~((if authorized by the~~  
24 ~~director of general administration in the event no bids are received,~~  
25 ~~the bids received are over the budget amount, or the subcontractor~~  
26 ~~fails to perform)).~~

27 ~~((+3))~~ (4) If the project is completed for less than the agreed  
28 upon maximum allowable construction cost, any savings not otherwise  
29 negotiated as part of an incentive clause shall accrue to the state.  
30 If the project is completed for more than the agreed upon maximum  
31 allowable construction cost, excepting increases due to any contract  
32 change orders approved by the state, the additional cost shall be the  
33 responsibility of the general contractor/construction manager.

34 ~~((+4))~~ (5) The powers and authority conferred by this section  
35 shall be construed as in addition and supplemental to powers or  
36 authority conferred by any other law, and nothing contained herein  
37 shall be construed as limiting any other powers or authority of the  
38 department of general administration. However, all actions taken  
39 pursuant to the powers and authority granted to the director or the

1 department of general administration under this section may only be  
2 taken with the concurrence of the department of corrections.

3 **Sec. 3.** RCW 39.04.230 and 1991 c 130 s 3 are each amended to read  
4 as follows:

5 Methods of public works contracting authorized by RCW 39.04.210 and  
6 39.04.220 shall remain in full force and effect until completion of  
7 ~~((contracts signed on or before June 30, 1996))~~ projects authorized on  
8 or before July 1, 1997.

9 NEW SECTION. **Sec. 4.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of the  
15 state government and its existing public institutions, and shall take  
16 effect immediately.

Passed the House February 10, 1994.

Passed the Senate March 3, 1994.

Approved by the Governor March 23, 1994.

Filed in Office of Secretary of State March 23, 1994.