

2 **SHB 1777 - H COMM AMD Adopted 3-19-91**

3 By Committee on Capital Facilities & Financing

4

5 Strike everything after the enacting clause and insert the  
6 following:

7       **"NEW SECTION.**   **Sec. 1.**       The legislature recognizes that fair and  
8 open competition is a basic tenet of public works procurement, that  
9 such competition reduces the appearance and opportunity for favoritism  
10 and inspires public confidence that contracts are awarded equitably and  
11 economically, and effective monitoring mechanisms are important means  
12 of curbing any improprieties and establishing public confidence in the  
13 process by which contractual services are procured. The legislature  
14 finds that there exists an urgent need for additional correctional  
15 facilities due to the inadequate capacity of existing correctional  
16 facilities to accommodate the present size and predicted growth of  
17 offender populations. The legislature further finds that both the need  
18 and the urgency to construct additional state correctional facilities  
19 requires the temporary use of more expedient methods for awarding state  
20 construction contracts for correctional facilities."

21       **"NEW SECTION.**   **Sec. 2.** A new section is added to chapter 39.04 RCW  
22 to read as follows:

23           (1) In addition to currently authorized methods of public works  
24 contracting, and in lieu of the requirements of RCW 39.04.010 and  
25 39.04.020 through 39.04.060, capital projects funded for over ten  
26 million dollars appropriated and authorized by the legislature for the  
27 department of corrections in the 1989-91 biennium at the McNeil Island

1 corrections center, the Clallam Bay corrections center, the  
2 construction of new correctional facilities under the authority of the  
3 secretary of corrections including drug camps; work camps; a new medium  
4 security prison and such other correctional facilities as may be  
5 authorized by the legislature during the biennium ending June 30, 1993,  
6 may be accomplished under contract using the general contractor/  
7 construction manager method described in this section. For the  
8 purposes of this section, "general contractor/construction manager"  
9 means a firm with which the department of general administration has  
10 selected and negotiated a maximum allowable construction cost to be  
11 guaranteed by the firm, after competitive selection through a formal  
12 advertisement, and competitive bids to provide services that may  
13 include life-cycle cost design considerations, value engineering,  
14 scheduling, cost estimating, constructability, alternative construction  
15 options for cost savings, and sequencing of work, and to act as the  
16 general contractor during the construction phase. The department of  
17 general administration shall establish an independent oversight  
18 advisory committee with representatives of interest groups with an  
19 interest in this subject area, the department of corrections, and the  
20 private sector, to review selection and contracting procedures. The  
21 general contractor/construction manager method is limited to contracts  
22 signed before July 1, 1996.

23 (2) Contracts for the services of a general contractor/construction  
24 manager awarded under the authority of this section shall be awarded  
25 through a competitive process requiring the public solicitation of  
26 proposals for general contractor/construction manager services.  
27 Minority and women enterprise total project goals shall be specified in  
28 the bid instructions to the general contractor/construction manager  
29 finalists. The director of general administration is authorized to  
30 include an incentive clause in any contract awarded under this section

1 for savings of either time or cost or both from that originally  
2 negotiated. No incentives granted shall exceed five percent of the  
3 maximum allowable construction cost. The director of general  
4 administration or his or her designee shall establish a committee to  
5 evaluate the proposals considering such factors as ability of  
6 professional personnel; past performance in negotiated and complex  
7 projects; ability to meet time and budget requirements; location;  
8 recent, current, and projected work loads of the firm; and the concept  
9 of their proposal. After the committee has selected the most qualified  
10 finalists, these finalists shall submit sealed bids for the percent  
11 fee, which is the percentage amount to be earned by the general  
12 contractor/construction manager as overhead and profit, on the  
13 estimated maximum allowable construction cost and the fixed amount for  
14 the detailed specified general conditions work. The maximum allowable  
15 construction cost may be negotiated between the department of general  
16 administration and the selected firm after the scope of the project is  
17 adequately determined to establish a guaranteed contract cost for which  
18 the general contractor/construction manager will provide a performance  
19 and payment bond. The guaranteed contract cost includes the fixed  
20 amount for the detailed specified general conditions work, the  
21 negotiated maximum allowable construction cost, the percent fee on the  
22 negotiated maximum allowable construction cost, and sales tax. If the  
23 department of general administration is unable to negotiate a  
24 satisfactory maximum allowable construction cost with the firm selected  
25 that the department of general administration determines to be fair,  
26 reasonable, and within the available funds, negotiations with that firm  
27 shall be formally terminated and the department of general  
28 administration shall negotiate with the next low bidder and continue  
29 until an agreement is reached or the process is terminated. If the  
30 maximum allowable construction cost varies more than fifteen percent

1 from the bid estimated maximum allowable construction cost due to  
2 requested and approved changes in the scope by the state, the percent  
3 fee shall be renegotiated. All subcontract work shall be competitively  
4 bid with public bid openings. Specific goals for women and minority  
5 enterprises shall be specified in each subcontract bid package that  
6 responsive bidders will have to meet or exceed. All subcontractors who  
7 bid work over one hundred thousand dollars shall post a bid bond and  
8 the awarded subcontractor shall provide a performance and payment bond  
9 for their contract amount if required by the general  
10 contractor/construction manager. The bidding of subcontract work by  
11 the general contractor/construction manager or its subsidiaries is  
12 prohibited but it may negotiate with the low-responsive bidder in  
13 accordance with RCW 39.04.015 or rebid if authorized by the director of  
14 general administration in the event no bids are received, the bids  
15 received are over the budget amount, or the subcontractor fails to  
16 perform.

17 (3) If the project is completed for less than the agreed upon  
18 maximum allowable construction cost, any savings not otherwise  
19 negotiated as part of an incentive clause shall accrue to the state.  
20 If the project is completed for more than the agreed upon maximum  
21 allowable construction cost, excepting increases due to any contract  
22 change orders approved by the state, the additional cost shall be the  
23 responsibility of the general contractor/construction manager.

24 (4) The powers and authority conferred by this section shall be  
25 construed as in addition and supplemental to powers or authority  
26 conferred by any other law, and nothing contained herein shall be  
27 construed as limiting any other powers or authority of the department  
28 of general administration."

1        "NEW SECTION.    **Sec. 3.** A new section is added to chapter 39.04 RCW  
2 to read as follows:

3        Methods of public works contracting authorized by sections 1 and 2  
4 of this act shall remain in full force and effect until completion of  
5 contracts signed on or before June 30, 1996."

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

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

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17      On page 1, line 1 of the title, after "construction;" strike the  
18 remainder of the title and insert "adding new sections to chapter 39.04  
19 RCW; creating a new section; and declaring an emergency."