
SUBSTITUTE HOUSE BILL 1777

State of Washington

52nd Legislature

1991 Regular Session

By House Committee on Human Services (originally sponsored by Representatives H. Sommers, Schmidt, Hargrove, Braddock, Leonard, Winsley, Fraser, Bowman, Zellinsky, Holland, Paris, Basich and May; by request of Department of Corrections).

Read first time February 25, 1991.

1 AN ACT Relating to expedited prison construction; adding new
2 sections to chapter 39.04 RCW; creating a new section; providing an
3 expiration date; and declaring an emergency.

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

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

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

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.04 RCW
5 to read 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 the
10 department of corrections in the 1989-91 biennium at the McNeil Island
11 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 facilities as may be
15 authorized by the legislature during the biennium ending June 30, 1993,
16 may be accomplished under contract using the general contractor/
17 construction manager method described in this section. For the
18 purposes of this section, "general contractor/construction manager"
19 means a firm with which the department of general administration has
20 selected and negotiated a maximum allowable construction cost to be
21 guaranteed by the firm, after competitive selection through a formal
22 advertisement, and competitive bids to provide services that may
23 include value engineering, scheduling, cost estimating,
24 constructability, alternative construction options for cost savings,
25 and sequencing of work, and to act as the general contractor during the
26 construction phase. The department of general administration shall
27 establish an independent oversight advisory committee with
28 representatives of interest groups with an interest in this subject
29 area, the department of corrections, and the private sector, to review

1 selection and contracting procedures. The general
2 contractor/construction manager method is limited to contracts signed
3 before July 1, 1996.

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

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

28 (3) If the project is completed for less than the agreed upon
29 maximum allowable construction cost, any savings shall accrue to the
30 state. If the project is completed for more than the agreed upon

1 maximum allowable construction cost, excepting increases due to any
2 contract change orders approved by the state, the additional cost shall
3 be the responsibility of the general contractor/construction manager.

4 (4) The powers and authority conferred by this section shall be
5 construed as in addition and supplemental to powers or authority
6 conferred by any other law, and nothing contained herein shall be
7 construed as limiting any other powers or authority of the department
8 of general administration.

9 (5) The department shall develop, in accordance with RCW 72.09.010,
10 and in cooperation with the contracted facility architect/engineer and
11 the general contractor/construction manager, a comprehensive,
12 innovative, and detailed site-specific design and specification plan
13 for each facility identified in this section.

14 Each design and specification plan shall include, but not be
15 limited to, design elements that allow for meaningful and productive
16 class I, class II, and class IV employment opportunities for a total of
17 fifty percent of the total employable inmates, educational
18 opportunities, and incentives to promote the work ethic, improve
19 behavior, and increase production. The department shall identify and
20 include in the design plans and specifications an array of incentives
21 that include but are not limited to recreational equipment that can be
22 purchased only by wages earned while working in correctional industries
23 programs, and modular portable and other amenities that can also be
24 purchased by the inmate and be added or taken out of the prison cells.
25 The design requirements outlined in this section shall be included in
26 the overall design and construction plans submitted for bid to the
27 general contractor/construction manager for each facility.

28 The detailed plans and specifications for the medium security
29 facility shall include the following design elements:

1 (a) Enough square footage of building space for not less than
2 twenty-five percent of all employable inmates to participate in class
3 I work opportunities and not less than twenty-five percent of all
4 employable inmates to participate in class II employment opportunities.

5 (b) Ten percent of the total cells planned to be constructed shall
6 contain modular portable or other amenities. The modular portable
7 amenities shall be specified by the department in consultation with the
8 contracted design engineers. Cells with the modular portable amenities
9 shall be designed and constructed so that only departmental employees
10 can install or remove the amenities.

11 (6) The secretary of corrections shall be responsible for
12 developing an incentives program that is facilitated by the
13 construction design of the prison. The program shall be developed and
14 administered so that inmates can earn higher wages based on
15 performance, production, and behavior and use those wages to purchase
16 an array of amenities. The amenities program shall promote the work
17 ethic and mirror, as closely as possible, the competitive work
18 environment outside of the prison. The secretary of corrections shall
19 establish by rule the additional amount inmates will be charged for use
20 of the modular portable and other amenities and ensure that the sale or
21 use of any amenity in the program results in a net revenue enhancement.
22 The department of corrections shall also establish the criteria by
23 which the cells with modular portable amenities shall be allocated to
24 deserving inmates to promote and adopt the work ethic. Only those
25 inmates employed in class I and class II jobs shall be allowed to
26 participate in the incentives program. The department shall be
27 required to allow inmates who because of physical or mental handicaps
28 cannot work to participate in the incentives program, and shall develop
29 special program criteria for that population.

1 (7) The secretary of corrections shall allow inmates to retain up
2 to twenty-five percent of their gross wages earned while working in
3 class I and class II correctional industries jobs to pay for room and
4 board, and amenities.

5 (8) The department of corrections shall be responsible for ensuring
6 that all new construction complies with the design incentives outlined
7 in this section and that all design elements comply with all federal
8 regulations and ensure the reasonable safety of all inmates.

9 (9) Funds recovered by the department of corrections from inmate
10 wages, other than the amount an inmate owes for legal financial
11 obligation shall be returned to the department to pay for the cost of
12 prison operations, as defined by the department, and for the victim
13 restitution fund.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.04 RCW
15 to read as follows:

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

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 39.04 RCW
20 to read as follows:

21 The department of corrections shall make every reasonable attempt
22 possible to achieve the standards and program goals outlined in
23 sections 1 and 2 of this act and report the extent in which they have
24 reached the standards and program goals by January 1, 1993, and every
25 year after that until January 1, 1996, to the appropriate committees in
26 the legislature and the governor. If the department is unable to
27 achieve the standards and goals outlined in sections 1 and 2 of this
28 act it shall identify the reason why and suggest changes in the

1 program. The report shall also identify, but not be limited to,
2 information about the incentive program net revenue enhancement to the
3 department, and suggestions for expanding or modifying the program.

4 NEW SECTION. **Sec. 5.** If sections 2 and 4 of this act or their
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 6.** Sections 1 and 2 of this act shall expire
9 June 30, 1996.

10 NEW SECTION. **Sec. 7.** 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.