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SENATE BILL 5529

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State of Washington

52nd Legislature

1991 Regular Session

By Senators Thorsness, Rasmussen, McCaslin, Owen, Nelson, Niemi, A. Smith, Conner and von Reichbauer; by request of Department of Corrections.

Read first time February 5, 1991. Referred to Committee on Law & Justice.

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 contractor/  
2 construction manager method is limited to contracts signed before July  
3 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 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.04 RCW  
10 to read as follows:

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

14 NEW SECTION. **Sec. 4.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act shall expire  
19 June 30, 1996.

20 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of the  
22 state government and its existing public institutions, and shall take  
23 effect immediately.