
ENGROSSED 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; and declaring an
3 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 life-cycle cost design considerations, value engineering,
24 scheduling, cost estimating, constructability, alternative construction
25 options for cost savings, and sequencing of work, and to act as the
26 general contractor during the construction phase. The department of
27 general administration shall establish an independent oversight
28 advisory committee with representatives of interest groups with an
29 interest in this subject area, the department of corrections, and the

1 private sector, to review selection and contracting procedures. The
2 general contractor/construction manager method is limited to contracts
3 signed 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 not otherwise
30 negotiated as part of an incentive clause shall accrue to the state.

1 If the project is completed for more than the agreed upon maximum
2 allowable construction cost, excepting increases due to any contract
3 change orders approved by the state, the additional cost shall be the
4 responsibility of the general contractor/construction manager.

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

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

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

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

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