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HOUSE BILL 2239

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State of Washington

53rd Legislature

1994 Regular Session

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 01/11/94. Referred to Committee on Capital Budget.

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

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

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

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

1 legislature further finds that (~~both the need and the urgency to~~  
2 ~~construct additional state correctional facilities requires the~~  
3 ~~temporary use of more expedient methods for awarding state construction~~  
4 ~~contracts for correctional facilities~~) this process has been most  
5 effective in the timely and cost-effective development of correctional  
6 facilities and that these provisions should be available for future  
7 projects that meet the requirements embodied in this section and RCW  
8 39.04.220.

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

11       (1) In addition to currently authorized methods of public works  
12 contracting, and in lieu of the requirements of RCW 39.04.010 and  
13 39.04.020 through 39.04.060, capital projects funded for over (~~ten~~)  
14 three million dollars (~~appropriated and~~) authorized by the  
15 legislature for the department of corrections (~~in the 1989-91 biennium~~  
16 ~~at the McNeil Island corrections center, the Clallam Bay corrections~~  
17 ~~center, the construction of new correctional facilities under the~~  
18 ~~authority of the secretary of corrections including drug camps; work~~  
19 ~~camps; a new medium security prison and such other correctional~~) to  
20 construct or repair facilities as may be authorized by the legislature  
21 (~~during the biennium ending June 30, 1993,~~) may be accomplished under  
22 contract using the (~~general contractor/construction manager~~)  
23 construction manager/general contractor method described in this  
24 section. For the purposes of this section, "~~general~~  
25 ~~contractor/construction manager~~) construction manager/general  
26 contractor" means a firm with which the department of general  
27 administration with the concurrence of the department of corrections  
28 has selected and negotiated a maximum allowable construction cost to be  
29 guaranteed by the firm, after competitive selection through a formal  
30 advertisement, and competitive bids to provide services that may  
31 include life-cycle cost design considerations, value engineering,  
32 scheduling, cost estimating, constructability, alternative construction  
33 options for cost savings, and sequencing of work, and to act as the  
34 construction manager and general contractor during the construction  
35 phase. (~~The department of general administration shall establish an~~  
36 ~~independent oversight advisory committee with representatives of~~  
37 ~~interest groups with an interest in this subject area, the department~~  
38 ~~of corrections, and the private sector, to review selection and~~

1 ~~contracting procedures. The general contractor/construction manager~~  
2 ~~method is limited to contracts signed before July 1, 1996.)~~)  
3 (2) Contracts for the services of a (~~general contractor/~~  
4 ~~construction manager~~) construction manager/general contractor awarded  
5 under the authority of this section shall be awarded through a  
6 competitive process requiring the public solicitation of proposals for  
7 (~~general contractor/construction manager~~) construction manager/  
8 general contractor services. Minority and women enterprise total  
9 project goals shall be specified in the bid instructions to the  
10 (~~general contractor/construction manager~~) construction manager/  
11 general contractor finalists. The director of general administration  
12 with the concurrence of the department of corrections is authorized to  
13 include an incentive clause in any contract awarded under this section  
14 for savings of either time or cost or both from that originally  
15 negotiated. No incentives granted shall exceed five percent of the  
16 maximum allowable construction cost. The director of general  
17 administration or his or her designee with the concurrence of the  
18 department of corrections shall establish a committee to evaluate the  
19 proposals considering such factors as ability of professional  
20 personnel; past performance in negotiated and complex projects; ability  
21 to meet time and budget requirements; location; recent, current, and  
22 projected work loads of the firm; and the concept of their proposal.  
23 After the committee has selected the most qualified finalists, these  
24 finalists shall submit sealed bids for the percent fee, which is the  
25 percentage amount to be earned by the (~~general contractor/construction~~  
26 ~~manager~~) construction manager/general contractor as overhead and  
27 profit, on the estimated maximum allowable construction cost and the  
28 fixed amount for the detailed specified general conditions work. The  
29 maximum allowable construction cost may be negotiated between the  
30 department of general administration with the concurrence of the  
31 department of corrections and the selected firm after the scope of the  
32 project is adequately determined to establish a guaranteed contract  
33 cost for which the (~~general contractor/construction manager~~)  
34 construction manager/general contractor will provide a performance and  
35 payment bond. The guaranteed contract cost includes the fixed amount  
36 for the detailed specified general conditions work, the negotiated  
37 maximum allowable construction cost, the percent fee on the negotiated  
38 maximum allowable construction cost, and sales tax. If the department  
39 of general administration with the concurrence of the department of

1 corrections is unable to negotiate a satisfactory maximum allowable  
2 construction cost with the firm selected that the department of general  
3 administration with the concurrence of the department of corrections  
4 determines to be fair, reasonable, and within the available funds,  
5 negotiations with that firm shall be formally terminated and the  
6 department of general administration with the concurrence of the  
7 department of corrections shall negotiate with the next low bidder and  
8 continue until an agreement is reached or the process is terminated.  
9 If the maximum allowable construction cost varies more than fifteen  
10 percent from the bid estimated maximum allowable construction cost due  
11 to requested and approved changes in the scope by the state, the  
12 percent fee shall be renegotiated. All subcontract work shall be  
13 competitively bid with public bid openings. Specific goals for women  
14 and minority enterprises shall be specified (~~(in each subcontract bid~~  
15 ~~package that responsive bidders will have to)~~) for the construction  
16 manager/general contractor firm that it shall meet or exceed. All  
17 subcontractors and/or the construction manager/general contractor 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 contractor/~~  
21 ~~construction manager)~~) construction manager/general contractor firm.  
22 The bidding of subcontract work by the (~~(general contractor/~~  
23 ~~construction manager)~~) construction manager/general contractor or its  
24 subsidiaries is prohibited but it may negotiate with the low-responsive  
25 bidder in accordance with RCW 39.04.015 or rebid if authorized by the  
26 director of general administration with the concurrence of the  
27 department of corrections. In the event no bids are received, the bids  
28 received are over the state's budget amount, or the subcontractor fails  
29 to perform, the construction manager/general contractor shall self-  
30 perform the work.

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

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

7 NEW SECTION. **Sec. 3.** RCW 39.04.230 and 1991 c 130 s 3 are each  
8 repealed.

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.

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