

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

3 By Committee on Capital Facilities & Financing

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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."