

Committee Name:

Senate Committee – Economic Development, Job Creation and Housing (SC–EDJCH)

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February 18, 2004

Committee on Economic Development,
Job Creation and Housing
Wisconsin State Capitol
Madison, WI 53702

Re: Testimony in **opposition** to Senate Bill 347
Milwaukee Metropolitan Sewerage District
Design Build Legislative Proposal

Madam chairperson, committee members, my name is Ned Czajkowski. I am an attorney representing the Wisconsin Underground Contractors Association. I am delivering this testimony for Richard W. Wanta, the Executive Director of that association, who is out of state administering the Association's Midwinter Conference.

The association is a statewide trade group representing approximately 170 contractor and associate member firms. As a trade association, we date back to 1937 representing water, sewer, tunnel, utility contractors and related services. It is our contractor group that worked most closely with the Milwaukee Metropolitan Sewerage District on major underground work let by the district. Consequently we are very familiar with the District governance, staff, operations and various projects that were let in the past and upcoming construction. The MMSD has millions of dollars worth of tax-funded work upcoming that is mandated under court order due to continued pollution to Lake Michigan and area waterways in Southeastern Wisconsin. (See Exhibit A)

We are here today, as contractors and as taxpayers, to protect our opportunity as Wisconsin business people to compete on every dollar of upcoming construction to be let by the Milwaukee Metropolitan Sewerage District. Not 20, 40, or 60 percent because other tax-funded MMSD construction projects were set-aside for design build contractors.

We are grateful and anxious for the opportunity to provide comments today regarding a 2004 Milwaukee Metropolitan Sewerage District proposal to use a design build delivery system for tax-funded public works construction. The vast majority of our members are strongly **opposed** to their proposed design build legislative proposal as it does away with the Wisconsin competitive bid law as we know it - a law that has served the taxpayers of Wisconsin and the MMSD well

for over 100 years. We hope that you will vote no to this MMSD design build legislative proposal before you today.

The Wisconsin competitive bid law dates back to 1889 (s.s. 925-90 Wis.Stats.1898) (Exhibit B). It was written specifically to protect the taxpayer against graft, corruption and favoritism in the award of tax-funded construction. All of us in this room are paying for current and future MMSD work with state, local, and federal tax dollars. As a contractor association *and* as taxpayers, we are here today, in part, to protect the existing 100-year old Wisconsin competitive bid law. We are here as an industry association to save the taxpayers from this misguided MMSD legislative proposal that would allow bureaucrats to *negotiate* tax-funded construction behind closed doors without full competitive bids. A proposal, that if passed, would provide a major governmental agency *an opportunity* for award of tax-funded construction through a highly subjective process open to political favoritism.

We are also here today to ensure that *all* Wisconsin contractors have an equal opportunity to bid on all tax-funded construction. Contractors from Milwaukee, Racine, Oshkosh, South Milwaukee, Appleton, Madison, or elsewhere must have an equal opportunity to bid *all* tax-funded work. Imagine it you were an earth-moving contractor from Racine or South Milwaukee and were prevented from bidding on a public works construction project like the upcoming MMSD watercourse work? Prevented, for example, from bidding on millions of dollars of tax-funded work because it is set-aside for design build teams out of California, Illinois, or wherever? Yet as Wisconsin contractors and taxpayers we are paying for that watercourse work. That is what would happen under design build if the MMSD can take upwards of \$60 million out of the Milwaukee area construction market. Under design build, the MMSD staff and a few commissioners could pick and choose contractors without regard to low bid. We in this room today must collectively protect the existing Wisconsin competitive bid law to ensure equal treatment for all contractors. More importantly we need to protect the taxpayer against political favoritism. We need to encourage the MMSD to open up the construction market, not restrict it or make it smaller with millions of dollars set-aside for design build work. We need to follow the dictates of our predecessors in 1889 when they wrote the existing Wisconsin competitive bid law that allows for full opportunity to bid *all* tax funded construction.

We understand the MMSD argument that the concept of design build as a project delivery system has been around for decades. But that is true mostly on *private* construction. What private developers do with their own money is their own business. For example, a private developer goes to a bank to secure a construction loan; perhaps the private developer hires a design build contractor to build their building quickly. The objective is to get rent-paying tenants in that new building to pay off a short-term construction loan quickly. That developer is using his or her own money and speculating that they will make a profit. Unfortunately with the taxpayers' money, because of political favoritism shown

certain contractors in the past by governmental agencies, we need safeguards to protect the taxpayer. Protections against graft, corruption and favoritism in the award of tax-funded public works contracts are needed more than ever. We have attached to my testimony today numerous examples of graft, corruption, and favoritism in the award of tax-funded construction. (See Exhibit C).

As we sit here today three or four Milwaukee aldermen have been recently convicted as felons. The current MMSD governance allows the Milwaukee mayor to appoint seven of eleven commissioners at the MMSD. Just recently the MMSD was criticized in the area press for having a politically connected consultant on the payroll. One long-time current suburban commissioner never knew the consultant in question was receiving tens of thousands of the taxpayers' money for consultant services or that he was even on the payroll. (See Exhibit D).

The MMSD was also criticized recently for attempting to hire a one-person public relations firm at \$3 million with the taxpayers' money. (See Exhibit E). Today some state legislators are under investigation for alleged corruption in public office. One Milwaukee area legislator, who worked closely with a contractor that benefited in part with multi-million dollar construction in MMSD set-aside minority construction projects, is under investigation. (See Exhibit F).

This is truly not the time to allow a system of design build on tax-funded construction, especially at the Milwaukee Metropolitan Sewerage District with their poor record of awarding the tax-payers money to a favored consultant and public relation firm. It is bad enough today that the MMSD awards millions of the taxpayers' money to consulting engineers without competitive bids. As taxpayers, we should not approve design build legislation that would actually make it easier to show favoritism to certain contractors. With all its problems and bad press, the MMSD today is the last governmental agency which should be allowed to *negotiate* tax-funded construction.

The MMSD staff will say with authority today that they will save the taxpayer time and money. They will probably use an example of a bridge, road, or water treatment plant built under design build. But the MMSD is in the business of building sewers, perhaps building a couple more tunnels, and pushing dirt around in Milwaukee area waterways for flood control. Many believe that we do not need any special design build sophistication of sewers. A sewer after all is a sewer! We do not need to design a certain color, window, or door scheme on that sewer like with above ground building construction. Nor do we need some special design like the beautiful 6th Street Viaduct in Milwaukee. The MMSD is replacing turn of the century sewers and pushing dirt around in Hoyt Park in Wauwatosa and the Menomonee Valley. We are talking about MMSD sewers and their pushing of dirt around in county parks to make storm water flow faster!

There is no proof that the MMSD will save time or money with this design build project delivery system. Even the Milwaukee Metropolitan Sewerage District

touts the benefit of competitive bidding. (See Exhibit G) Nowadays, certain MMSD commissioners and staff may tout the Lincoln Creek Reach 6 design build project as an example of saving time and money. Area taxpayers will never know if Lincoln Creek Reach 6 could have been done cheaper as *no competitive bids were taken*. In the past, our association sued the MMSD for their failure to follow the existing Wisconsin competitive bid law and settled out of court with the MMSD with the understanding that they would follow the current law.

The State of Wisconsin MMSD audit dated July 2002 criticized the MMSD for cost overruns relative to Lincoln Creek. On page 47, the quote was... "the cost of Lincoln Creek project increased 63.7 percent from original estimates." (See Exhibit H) Obviously the Lincoln Creek project did not save a dime of the taxpayers' money.

As you read the proposed MMSD design build legislative proposal before you today, you may get the impression that it is a reasonable idea. However, as you read further we call your attention to this misguided proposal. Again it is important that you understand as lawmakers that this MMSD design build legislative proposal is without taxpayer safeguards. Glaring omissions in their legislative proposal are as follows:

1. The refusal of the MMSD to include an *impartial* citizen selection committee to determine if design build for a specific project makes economic sense to the taxpayers. Someone other than MMSD staff and commissioners to determine if a design build contract has merit. What is the business reason for doing this? Can we prove that it will save money? Will it result in a better sewer? The MMSD proposed that \$60 million be taken from the construction marketplace to be set-aside for favored design build engineer/contractor teams. We fear that some current MMSD commissioners and staff may find it convenient to select only favored design build contractors and engineers.
2. There is no third party evaluation review after completion of their proposed demonstration projects.
3. No stipend is paid for expensive contractor/design team Requests for Proposals.
4. Notice that there is no ethics policy for existing commissioners and MMSD employees relative to this design build legislative proposal. As indicated earlier, our industry is concerned about favoritism in the award of tax-funded construction and the potential influence of former commissioners and staff. *There is no provision in this proposed legislation that former commissioners or employees are denied, directly or indirectly, from participation in future MMSD design build work.* With passage of this legislation state lawmakers are opening the door to contracts with former

commissioners and MMSD staff that stand a chance to get rich over the next few years under the state Department of Resources court ordered mandate of construction. It is almost as if the MMSD has taken a casual approach to ethics with a contempt for the taxpayer. As we stated earlier, the MMSD is under court order to do perhaps \$700 million in construction through 2007.

5. There is no actual sunset clause in their proposal. Over time, the entire MMSD Capital Budget could go design build. We will say to our children, that we once worked at the MMSD but now only an exclusive contractor does their work. In time, perhaps there will be one major construction manager and a favored design engineer doling out crumbs to small disadvantaged contractors. The MMSD board will meet once a quarter perhaps over coffee and donuts to rubber stamp staff recommendations.
6. There is no limitation of the dollar amount of those five demonstration jobs. The MMSD could bundle all their upcoming design build jobs and schedule their individual demonstration jobs at one mega \$60 million contract. Few Wisconsin contractors can get a bond over \$50 million and the smaller Wisconsin contractor, who are helping to pay for these MMSD projects, will be shut out of the process.
7. There is no limit on contractor/design risk. The MMSD is shifting all risk to contractor/design teams. The MMSD in a 1988 directive established a policy of *risk sharing* to protect the taxpayer. Without risk sharing, they MMSD projects would have cost more. In Milwaukee, because the soil has been turned over for 100 years due to various construction, the soil is different every ten feet. The history of underground construction in the Milwaukee area is replete with cases where conditions actually encountered are substantially different than originally anticipated.
8. Although it calls for a performance bond, no payment bond language is included.
9. Simply put, there are *no taxpayer safeguards* in this MMSD legislative proposal.
10. And this is a lame duck MMSD administration sitting in this room with you today. In two months there will be a new Milwaukee mayor who can and will replace some seven of eleven MMSD commissioners and existing staff. Specifically those in the room today that are pushing this misguided design build legislative proposal.

Under current Wisconsin State law dating back 100 years, all major *tax-funded* construction must be competitively bid and this MMSD legislative proposal does away with the existing competitive bid law as we know it forever. **This is a time**

when the MMSD announced \$700 in construction over the next seven years. All of a sudden, we have all this historic construction opportunity and the MMSD wants to change the Wisconsin competitive bid law! We feel that once this legislation is passed, municipal government would soon make an effort to amend the law to include city and state projects throughout Wisconsin.

Incidentally the last time we looked, the MMSD expended \$445,662 in tax dollars for lobbying activity over the past two years. Some of the money was used toward passage of this design build legislation with the hiring of highly paid lobbyists. As taxpayers, we believe that those lobbying dollars should have been used for *actual construction* to deal with the Milwaukee area pollution problem.

That is also true for the \$850,000 recently approved for public relations. Many taxpayers believe that we no longer need videos or paper documents to show us that we have a pollution problem in Lake Michigan and the Milwaukee River. Nowadays taxpayers in Milwaukee and state government loaning agencies expect that tax dollars be spent on the pollution problem by actually fixing the sewers! Obviously the best MMSD public relations would be reducing Lake Michigan pollution!

Imagine for a moment what we could have done with that MMSD lobbying and public relations money spent to date? We could have replaced some worn out MMSD sewers and actually provided family supported jobs for area residents versus money for these smartly dressed MMSD lobbyists and PR firms in the room today.

We do not purport to speak for anyone else, but it is our understanding that not a single other industry contractor trade association supports a bill on design build at the MMSD. All of us in the industry want the existing Wisconsin competitive bid law to remain as is. Many believe that projects paid with public money should be publicly bid, as a matter of principal as well as state law.

Former legislators, those that created the Wisconsin competitive bid law over 100 years ago, we fear, would be spinning in their graves if the law was changed to allow for *negotiation* of tax funded construction with a select group of contractors and engineers. Our industry, and we believe the taxpayer, want all tax-funded construction to be competitively bid. They want maintenance of existing law where *all* Wisconsin contractors compete equally on tax funded construction.

In summary, our industry opposition to this proposed MMSD design build legislation is based on the following:

1. **The legislation does away with over 100 years of legislative history that requires competitive bidding on underground public works construction.** The original law dates back to 1889 (s.s.925-90, Wis.Stats.1898). It became law to protect the taxpayers from the potential

for graft, corruption and favoritism in the awarding of publicly funded construction. The legislation states in part, "There is no better safeguard against infidelity of officials than to require municipal contracts to be publicly let..."

- For over 100 years current legislature has protected the right of the contractors, both small and large, to bid public works construction. We believe that this proposed legislation would restrict competition and entry in the bidding process. We believe that state government has a role to ensure that *all* contractors, not just a select group of politically favored contractors, have an opportunity to create and maintain jobs for their workers.
- Competitively bid construction has been the basis for tax-funded *public* construction for many years in Wisconsin. By definition, competition is a struggle or rivalry for a prize. It is one of the strongest impetuses toward effectiveness and efficiency. Contract opportunity, the prospect of competition, and a good number of bids places a constraint on high costs to the taxpayer. Because contractors are competing for contracts and jobs for their workers, the taxpayers see significant savings. (See Exhibit I).
- As currently written, this new MMSD proposal creates an oligopoly market situation whereby only a handful of contractors will be awarded contracts. Our fear is that the Milwaukee Metropolitan Sewerage District may award one or two firms the bulk of the tax-funded work and they will have the entire marketplace to themselves. They in turn would then divide up the public work. That situation could happen because the MMSD projects \$600 million in conveyance and watercourse work over the next six years. This proposed legislation would allow for the *selection* of contractors to submit design build proposals. Should this legislation pass, we fear that only *favored* contractors will get the bulk of the MMSD proposed work.
- Because the MMSD has limited design build experience, and because the MMSD lacks definitive cost saving numbers, we feel that the MMSD should not be experimenting with state, federal and local tax dollars under a design build proposal. The potential for increased costs, collusion and favoritism in the award of tax-funded contracts is not a mythical fear as under design build there is no system of checks and balances to protect the taxpayer.
- Nearly every business day, contractors from Wisconsin bid municipal and other governmental contracts. Those contractors are from your legislative district and others. They should *all* have an equal opportunity to bid work at *any* Wisconsin municipality or sewerage

district free of the fear of favoritism. WUCA members want the promotion of fair and open competition yet this proposed design build legislation would actually promote the selection of only a few very large contractors. Design build is a bad idea for public works construction because it removes the checks and balances inherent in our system of open bidding.

2. **This proposed legislative proposal would not save taxpayers money.** Underground construction is the most risky type of construction due to concerns with differing soil conditions, rock, methane and petroleum contamination and contractors must deal with those contingencies. This proposed legislation would place more responsibility on the contractor under a design build *team* approach to construction. As such, the contractor and their engineer will bid a higher fee for construction and to cover the unknowns. We believe that the taxpayer will actually pay more. The current MMSD system had risk sharing with the contractors whereby the owner, contractor and consulting engineer will sit down and talk about problems and seek a reasonable solution. This risk sharing policy dates back maybe 20 years at the MMSD.
3. **Many municipalities and sewerage districts use state, federal and local tax money for their infrastructure improvements.** If the Milwaukee Metropolitan Sewerage District is using tax dollars or grants from other areas of government, we believe that they have an *obligation* to accept *all* bids from *qualified* bidders. To do otherwise arguably would be a restraint of trade. This proposed legislation would suggest that a few contractors would be selected from a short list of contractors to submit proposals. It could allow an opportunity for favoritism in the award of public works construction. Smaller contractors have a legitimate fear that cronyism and favoritism will squeeze them out of the public works market if low-bid contracting becomes history at the Milwaukee Metropolitan Sewerage District and at others levels of government.

Design build as it relates to *underground* construction is a mere concept without proven benefits. Large out-of-state contractors and engineers tout the concept. And if successful with their proposed design build concept, will take millions in profits out of state at the cost of Wisconsin contractors, professional engineers, and taxpayers. The design build concept provides no legitimate reason to overturn 100 years of Wisconsin open bidding law on upcoming Milwaukee Metropolitan Sewerage District work. There simply is no proof that design build is a better delivery system to deal with underground sewer repairs and flooding problems. We believe that this proposed legislation is nothing more than a fundamental assault on Wisconsin's competitive bid law and an attempt by a few to circumvent the low bid system of awarding the lowest responsible bidders.

No one can show that current Wisconsin law is obsolete or outmoded. No one can show that design build of underground sewers will save the taxpayers a dime. Wisconsin is blessed with honest government and we should keep it that way by protecting existing state law.

One only has to read the national press relative to all the construction projects being awarded to one major construction firm for the rebuilding of Iraq's infrastructure. We must not sanction today a scenario that allows the Milwaukee Metropolitan Sewerage District to award one dollar of tax-funded construction to a select group of favored contractors. This MMSD legislative proposal must be rejected as nothing more than a raid on the taxpayers' pocketbook by those contractors and engineers touting design build in order to line their own pocketbooks at the expense of others. There are too many pitfalls with design build in public works construction. We believe that reduced bidding creates the potential for abuse. Design build as presented by the Milwaukee Metropolitan Sewerage District is just not practical for the underground contracting industry.

We ask you today to reject this MMSD design build proposal and help us protect the existing 100-year old Wisconsin competitive bid law that has served the taxpayer so well with a system of safeguards. The existing state law requires open and fair competitive bidding free of political favoritism. Even with its occasional missteps, is better than *negotiation* of tax-funded construction behind closed doors at the Milwaukee Metropolitan Sewerage District.

Thank you for your attention today.

EXHIBIT

A

**MILWAUKEE METROPOLITAN SEWERAGE DISTRICT
2004 CAPITAL BUDGET
PROPOSED LONG-RANGE FINANCING PLAN**

	Six-Year Capital Improvements Program							Six-Year Total
	2003	2004	2005	2006	2007	2008	2009	
Beginning balance	\$80,067	\$125,582	\$45,362	\$46,495	\$32,640	\$35,895	\$20,679	\$125,582
Add:								
Tax levy	71,946	71,946	79,648	82,834	86,147	89,593	93,177	503,344
Extraterritorials	12,495	15,085	25,595	24,773	26,081	28,419	27,972	147,925
Federal and State Aid	2,666	2,823	2,876	2,931	2,988	3,048	3,110	17,775
Loans	69,388	98,051	94,745	36,754	11,253	4,254	0	245,058
Interest & other	1,939	1,683	1,180	1,096	1,039	978	1,055	7,031
Bonds issued	69,000	0	50,819	34,840	87,937	13,855	132,489	319,940
Bond premium (discount)	5,095	0	0	0	0	0	0	0
Total revenues	232,529	189,588	254,863	183,228	215,445	140,146	257,802	1,241,073
Use of (Additions to) available funds	(45,515)	80,219	(1,133)	13,855	(3,255)	15,216	(23,619)	81,284
Total sources	187,014	269,808	253,730	197,083	212,190	155,363	234,183	1,322,357
Less:								
Plants	18,251	34,098	40,610	23,243	24,481	28,203	24,601	175,236
Conveyance	71,719	107,337	87,922	57,106	62,651	20,877	90,136	426,028
Watercourse	27,954	45,404	40,810	27,167	28,866	7,915	14,321	164,484
Other Projects	15,414	21,163	16,639	8,196	6,332	3,463	6,384	62,177
Project spending	133,338	208,003	185,980	115,712	122,331	60,457	135,442	827,925
Existing MMSD debt	26,416	30,262	30,171	30,028	29,909	29,802	29,704	179,876
Future MMSD debt	0	0	1,220	4,845	8,868	14,027	17,967	46,927
State loans	27,260	31,543	36,360	46,498	51,082	51,076	51,070	267,629
Debt service	53,676	61,805	67,750	81,371	89,859	94,905	98,741	494,432
Total uses	187,014	269,808	253,730	197,083	212,190	155,363	234,183	1,322,357
Ending balance	\$125,582	\$45,362	\$46,495	\$32,640	\$35,895	\$20,679	\$44,298	\$44,298
Tax rate / \$1000	\$1.70	\$1.60	\$1.70	\$1.70	\$1.70	\$1.70	\$1.70	
% Cash financing	3%	49%	22%	38%	19%	70%	2%	31.8%
Debt Outstanding 12/31	670,114	734,793	836,762	866,414	908,394	862,612	932,948	
Debt as % of Eq. Value	1.49%	1.57%	1.72%	1.71%	1.73%	1.58%	1.64%	

- (1) Tax levy unchanged for 2004. Tax levy for 2005 and thereafter based on projected property values.
- (2) District equalized value projected to increase 4% per year.
- (3) Extraterritorial billings for 2005 and thereafter assume a 5% annual increase in property value with a credit for watercourse expenditures.
- (4) Grant revenues from 2004 - 2009 include \$1.5 million per year for Central MIS Improvements and Milwaukee County Grounds Detention Basins.
- (5) State loan revenues from 2003 - 2009 include \$169 million in new Clean Water Fund loan awards at interest rates ranging from 2.85% to 3%.
- (6) Future District bond issues structured as 20-year level debt service with 2004A bonds at an assumed interest rate of 4.3% and debt issues from 2005 through 2008 at 4.8%.
- (7) % Cash financing of capital projects assumes that \$9 million of 2003D Bonds are applied to 2004 project expenditures.

2004 Construction

<u>Project ID</u>	<u>Project Name</u>	<u>Anticipated</u>	
		<u>Start</u>	<u>Finish</u>
J06021	Inline Storage System - Head Tank Installation Project includes the demolition and replacement of Jones Island and South Shore Head Tanks for the Inline Storage System (ISS). The ISS pump station is located at the Jones Island Wastewater Treatment Plant. The fabrication of both head tanks has been contracted and will be delivered for installation in early March, and late March of 2004, respectively. MMSD will strive to complete the installation before the spring of 2004 to keep the Inline Storage System operational.	01/16/04	04/15/04
J06014	Plants I&C Upgrade Final Design The final phase of the Instrumentation and Control (I&C) project will replace and upgrade process control and monitoring equipment at the treatment plant to improve the reliability and efficiency of wastewater treatment. I&C equipment monitors and controls such processes as flows, dissolved oxygen levels, valve positions, and equipment starts and stops.	04/08/04	08/01/05
W20003	Lower Tosa (Phases I & II) Project will address severe flooding problems along approximately one-mile stretch of Menomonee River from Harmonie Avenue to N. 63rd Street. The selected alternative involves lowering the floodplain one- to three-feet in the Hart Park portion of the Menomonee River, and building 12,000 feet of earthen levee and floodwall. The floodplain lowering includes an open space with a park-like setting. The concept also includes drainage improvements on the land side of the levee to accommodate stormwater drainage during storm events.	04/12/04	02/01/06
C05035	Port Washington Road Pump Station Upgrade This project will replace pumping equipment & appurtenances that are operating beyond expected service life at the station located at 5022 N. Port Washington Road in the City of Glendale. Originally constructed in 1933, it is one of the larger pump stations in the system and provides service to five municipalities.	04/27/04	10/01/04
C07010	Harbor Siphons [HS] The harbor siphons bring flows under the harbor to the Jones Island wastewater treatment facility. All wastewater treated at Jones Island goes through these siphons. The project anticipates construction of new 2- and 3-barrel siphons, placed in rock tunnels, for the entire high-level MIS system (Basins B,E, &H) and a new dual-barrel siphon for the Basin A low-level system. The connection points from the existing MIS include South Barclay Street at E. Scott Street, North 6th Street at W. Clybourn Street and N. Milwaukee Avenue at E. Kilbourn Avenue, with the downstream connection at the Jones Island Wastewater Treatment Plant.	05/03/04	02/01/07
W20022	Hawley Road/Honey Creek Bridge Removal The demolition of the Lower Hawley Road Bridge, a sixty-five foot concrete arch structure located in the City of Milwaukee, will include removal of the bridge deck and portions of the bridge footings as required to ensure the hydraulic function. There are numerous utilities attached to the bridge that include WE Energies gas line, SBC fiber optic line, and City-owned sanitary, communications and electrical lines. The demolition of the Honey Creek bridge, an abandoned eight-foot by four-foot box culvert that once carried Old Loomis Road, will entail the removal of the entire structure.	05/06/04	10/01/04
C05037	Brady Street Pump Station This project will abandon the Brady Street Pump Station which is no longer needed. The existing mechanical systems will be removed from the building & disposed of. The existing structure will remain in place.	05/03/04	08/01/04

<u>Project ID</u>	<u>Project Name</u>	<u>Anticipated</u>	
		<u>Start</u>	<u>Finish</u>
K01002	Pump Station VFD Replacement This project will renovate obsolete electrical equipment at the Underwood Creek and Greenfield Park Diversion Pumping Stations. Work includes removal and replacement of nine regenerative slip variable speed drives with owner-supplied variable frequency drives (VFDs)(2-250 hp & 2-125 hp) and reduced voltage solid state starters (RVSSs)(3-250 hp & 2-125 hp). The work includes installation of new owner-supplied motors for the four pumps that will receive new VFDs, and conversion of the other five motors (with RVSSs) from wound rotor to squirrel cage type. Existing relay-based pump sequence control panels will be removed, and their functions integrated into existing PLC-based panels at each station. Existing 480-volt switchgear will be reworked to allow for permanent connection of an existing on-site 1250 kW standby generator at Underwood Creek, and a new 400-ampere portable generator plug at Greenfield Park. Work at both sites includes demolition and replacement of existing wiring, conduits and raceways. Testing of the replacement drives, motors, control panels and switchgear will be jointly done with the engineer and the drive manufacturer.	5/4/2004	9/17/2004
C05036	Villard Avenue Pump Station Upgrade The existing drywell-wetwell pump station will be replaced with a submersible station located at 2701 W. Village Avenue in the City of Milwaukee. This is a wet weather bypass pump station that was originally constructed in 1954.	06/01/04	Feb, 2005
W13001	Indian Creek Flood Management Project Project will provide environmentally responsible protection from out-of-bank flooding. The construction of flood management features will occur in 2004 and will consist of a 17.4 acre-foot detention basin north of Indian Creek and west of N. Port Washington Road basin.	06/15/04	01/01/05
W21001	Underwood Creek Repair Project includes rehabilitation of a 430' section of buckled concrete channel liner located along Underwood Creek near N. 124th Street and W. Bluemound Road, as well as a 370' highly eroded section to be stabilized using rip-rap/bio-engineered techniques. Utilities in the area include twin American Transmission towers and a gas underground pipeline.	06/22/04	03/01/05
C98039	Conveyance Pump Station Upgrades Pumping equipment & related appurtenances that are operating beyond expected service life at seven District pump stations will be replaced. Nine pump stations located in seven municipalities were subject to a condition assessment study in 2002. For each pump station examined, the study report contains a description of deficiencies & recommendations for improvements. Two of these pump stations are included as separate projects in the 2003 budget and the remaining require similar improvements to pumping systems & electrical and mechanical systems. Due to this similarity, the seven pump stations have been combined into this project.	06/29/04	03/01/05
S06004	Plants I&C Upgrade - Final Design The final phase of the Instrumentation & Control (I&C) project will replace and upgrade process control and monitoring equipment at the treatment plant to improve the reliability and efficiency of the South Shore Wastewater Treatment Plant. I&C equipment monitors and controls such processes as flows, dissolved oxygen levels, valve positions, and equipment starts and stops.	Aug., 2004	Dec., 2005
S02003	SS Wet Weather Secondary Capacity Improvements Recommendations include improving mixed pickle liquor flow distribution between the front secondary clarifiers and the back secondary clarifiers, and implementing a step-feed activated sludge mode of operation during wet weather. Manual gates will be modified with actuators to allow remote control and monitoring.	10/04/04	08/01/05

<u>Project ID</u>	<u>Project Name</u>	<u>Anticipated</u>	
		<u>Start</u>	<u>Finish</u>
J01006	JI Preliminary Facility Upgrade Improvements will be constructed under two (2) construction contracts, one service contract and one or more equipment procurement contracts. The construction contracts will be: 1) Immediate Needs (10/04) - Installation of additional primary sludge and scum handling equipment, replacement of roofing and HVAC systems, installation of odor control equipment, grit handling improvements and associated electrical, mechanical, structural and I&C improvements; 2) New Influent Bar Screens (3/05) - Replacement of the existing influent bar screening equipment system and associated electrical, mechanical, structural and I&C improvements; 3) Screw Pump Inspection and Overhaul (TBD) - Inspection and overhaul of the existing influent screw pump gear boxes and lower bearing assemblies; 4) Procurement (TBD) - Bidding and District procurement of process equipment critical to the timely completion of proposed project improvements.	10/04 & 03/05	TBD
J04006	Milorganite Facilities Improvements Project includes replacement and/or abrasive material lining of equipment systems or selected components in the following areas: Recycle Bin Bucket Elevators, Main Recycle Screws, Main Recycle Air Belt Feed Screws, Recycle Bins, Dryer Feed Screws, first Stage Surge Bins and several other screws and drop chutes.	05/01/04	TBD
C05020	Providence Avenue MIS Replacement The existing 39-inch Special Section MIS sewer at East Providence Avenue & N. Oakland Avenue will be abandoned and replaced by a new 42-inch diameter sewer. Dry weather flow from the N. Oakland Avenue combined sewer in the Village of Shorewood will be rerouted and connected to the new MIS sewer. The dam in the combined sewer portion of the intercepting structure will be removed to allow the free flow of stormwater through the structure. Intercepting Structure 74A at E. Providence Avenue and N. Bartlett Avenue will be reconstructed to meet hydraulic & flow isolation needs	07/19/04	01/01/06
J02001	JI Wet Weather Capacity - Permanent Baffles Installation Recommendations include eliminating for short-circuiting in nine (9) of the East Plant Secondary Clarifiers during wet weather. A special baffle will be installed in the feed wells of each of the clarifiers to distribute the influent flow uniformly.	9/1/2004	11/30/05
J06020	Jones Island Metasys & Simplex Systems Upgrade This project will upgrade the existing obsolete Simplex fire alarm system at Jones Island to current technology. The updated system will identify the source of each alarm by individual smoke or heat detector, water flow switch, or a manual pull station.	Dec., 2004	Dec., 2005
C05021	N.Sherman Blvd. Relief Sewer Project consists of the construction of approximately 1,420 linear feet of 15-inch diameter sewer relay along North Sherman Blvd. between W. Glendale Avenue and W. Hampton Avenue. The sewer relay will replace the existing 12-inch diameter MIS that was constructed in 1925.	March, 2005	Aug., 2005

EXHIBIT
B

**MICHAEL BEST
& FRIEDRICH LLP**
Attorneys at Law

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June 5, 2003

Richard W. Wanta
Executive Director
Wisconsin Underground Contractors' Association Inc.
2835 N. Mayfair Road
Milwaukee, WI 53222-4483Re: Original Competitive Bid Law

Dear Dick:

Enclosed please find a copy of the 1800's law you requested. Please let me know if I can be of further assistance.

Yours very truly,

MICHAEL BEST & FRIEDRICH LLP
Charles B. PalmerCBP:kxs
Enclosure

NACLIENT\013008\0001\F0042902.1

[Ch. 40a.]

CH. 40a.]

CITIES UNDER GENERAL LAW.

[SECS. 925-89, 90.]

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npany making such ecessary safeguards rovision applies to e the ordinance was theless. On proper herewith will be ente v. Janesville St.

Repair of streets. SECTION 925-89. In case any corporation or individual shall neglect to repair or restore to its former condition any street, alley or sidewalk excavated, altered or taken up, within the time and in the manner directed by the board, said board shall cause the same to be done at the expense of said corporation or individual. The expense thereof, when chargeable to a lot-owner, shall be certified to the city clerk by the board, and if not paid shall be carried into the tax roll as a special tax against the lot.

Sec. 89, ch. 826, 1899, with addition of last sentence.

Contracts, how let. SECTION 925-90. All public work, the estimated cost of which shall exceed two hundred dollars, shall be let by contract to the lowest responsible bidder; all other public work shall be let as the council may direct. When the work is directed to be let to the lowest responsible bidder or is required to be so let under the provisions of this section, the board of public works or such officers as shall be designated to discharge its duties shall advertise for proposals by publishing a notice in the official newspaper at least once in each week for at least two successive weeks. Before such proposals are advertised for a profile of the work to be done, together with the specifications, shall be placed on file for the inspection of bidders, and a form of contract with sureties, as the same will be required to be executed by bidders, shall be prepared and a copy of the same furnished to any person desiring to bid on the work. No bid shall be received when not accompanied by a bond with sureties executed on the part of the bidder and such sureties, which sureties shall justify as to their responsibility and by their several affidavits show that they are worth in the aggregate at least the amount mentioned in the contract in property not by law exempt from execution; provided, that a certified check in amount equal to five per cent. of the bid, and a provision in the contract for the retention by the city of twenty per cent. of the estimates made from time to time, may be accepted in place of sureties. The power to reject any and all bids shall be deemed to exist unless expressly waived. When no proper bids shall be received for any such work the council, by a two-thirds vote of all its members, may direct that such work be done under the supervision of such officer or officers as it shall designate.

Sec. 90, ch. 826, 1899, and sec. 39, ch. 812, 1898, with amendments.

Lowest responsible bidder. If the lowest bid is rejected without it being made to appear that it was informal or irregular or that the bidder was irresponsible, and the contract is awarded to a higher bidder, it is illegal and he cannot recover for work done under it: *Brady v. Mayor*, 20 N. Y. 312; *McDonald v. Mayor*, 68 id. 23; *Dickinson v. Poughkeepsie*, 75 id. 65; *People v. Gleason*, 25 N. E. Rep. 4. An arbitrary determination by the awarding board to accept a higher bid, without any facts to justify it, cannot have the effect of a judicial determination, and is a violation of the law. In such a case nothing is added to the validity or legality of such bidder's claim by its audit and allowance; such action is without jurisdiction: *People v. Gleason*, *supra*; *Board v. Ellis*, 59 N. Y. 620; *Lyddy v. Long Island City*, 104 id. 218.

See note as to bids, rejection, opening, defective bids or bonds, fraud, change of plans, deposit, decisions by the council, remedies by *mandamus*, injunction, etc., to the case of *Anderson v. Board*, 28 L. R. A. 707-711.

Personal liability of officers. In determining which of several bids shall be accepted the awarding body acts judicially, and

the members of it are not liable in a civil action to a party whose bid was the lowest for the profits he might have made if the contract had been given him. The duty of such body is to the city or its inhabitants, not to the bidders, or for the benefit of individuals: *East River G. L. Co. v. Donnelly*, 93 N. Y. 337.

Variation of contract. The effect of this section is to deprive any officer or board of the city of authority, without the approval of the council or body authorized to enter into contracts for the particular work, to make any material change in the plans of a sewer contract made by the city: *Campan v. Detroit*, 64 N. W. Rep. 236. Parsons doing work for a city are chargeable with notice of the existence of the law: *McBrian v. Grand Rapids*, 56 Mich. 103.

Letting contracts. A contract is invalid unless due notice of the time and place of letting it is given: *Kneeland v. Furlong*, 20 Wis. 437; *Rogers v. Milwaukee*, 13 id. 610.

Under the charter of Milwaukee the street commissioners were without authority to let a contract for the construction of a sewer or to advertise for proposals until they had filed the specifications therefor as required: *Kneeland v. Milwaukee*, 18 Wis. 411; *Wells v. Burnham*, 20 id. 112.

SECS. 925—91, 92.]

TOWNS, VILLAGES AND CITIES.

[Ch. 40a.

It is enough if the plan made is as full and perfect as it is usual for persons of competent skill to make of similar works. A requirement that the plan be filed in a designated office is satisfied if it is left there for inspection though it is not marked "filed." *Houghton v. Burnham*, 22 Wis. 301.

The work to be done, the manner or style in which it is to be done and the material to be used must be definitely described in the plans and specifications upon which proposals are asked and in the contract. If, without necessity, these things are left to the discretion of the officers the law concerning letting contracts to the lowest bidder is violated: *Wells v. Burnham*, 20 Wis. 112.

The amount of work intended to be included in each contract must be specified when it is practicable; and the time within which it is to be finished, the manner in which it is to be done and the quality of the materials to be furnished: *Kneeland v. Furlong*, 20 Wis. 437. Officers cannot reserve the right to divide the work after the bids are received "according to the ability of the contractors to do the same, or as they may think for the best interest of the property affected and that of the public." *Ibid.*

If the lowest bidder does not comply with the offer he has made he may be regarded as an irresponsible bidder and the contract may be let to the next lowest: *Houghton v. Burnham*, 22 Wis. 301, 309.

The notice to contractors did not define the exact size and number of the man-holes connected with a sewer nor specify the quality of the cement to be used in constructing it. It appeared that the expense of the man-holes, as compared with the cost of the whole work, was trifling and did not affect the bids, and that the best quality of cement was used. A

sewer tax was not invalidated by these omissions: *Houghton v. Burnham*, 22 Wis. 301.

The fact that a contract for a pavement was not let within the time fixed by law and that no plan or profile of the work was filed before the letting will not authorize the interference of a court of equity if the party complaining does not show that he was injured thereby: *Warner v. Knox*, 50 Wis. 429.

If the board is not required to let the whole work on a proposed improvement at one time and is unable to get satisfactory bids for it a contract may be let for part of it at one time and the remainder at another: *Wright v. Forrestal*, 85 Wis. 341. As to reletting contracts, see *Mitchell v. Milwaukee*, 18 Wis. 92.

Although the cost of improving streets and sidewalks is made chargeable upon the several lots in front of which the improvement is made, yet such work is public work done for the city or ward, and the city officers in letting contracts therefor act as its agents: *Mitchell v. Milwaukee*, 18 Wis. 92.

Liability for accident. Under a charter which required the city to provide in contracts for street improvement that the contractor "shall put up and maintain such barriers and lights as will effectually prevent the happening of any accident," where this has been done and the barrier put up has been removed by some unknown person before an accident happened, the city is not liable for such accident without proof that it had actual or implied notice of the removal of the barrier and that a reasonable time had elapsed for guarding against the resulting danger: *Klatt v. Milwaukee*, 53 Wis. 196. The requisite notice is not established where it only appears that the accident happened in the night, five hours after the barriers were erected, and it does not appear when or by whom they were removed; *Ibid.*

Incompetent bidders. SECTION 925—91. Whenever any bidder shall be, in the judgment of said board, incompetent or otherwise unreliable for the performance of the work on which he bids, the board shall report to the council a schedule of all the bids for such work, together with a recommendation to accept the bid of the lowest responsible bidder, with their reasons; and thereupon the council may direct said board either to let the work to such competent and reliable bidder or to readvertise the same; and the failure to let such contract to the lowest bidder in compliance with this provision shall not invalidate such contract or any special assessment made to pay the liability incurred thereunder.

Sec. 91, ch. 326, 1889.

Incompetent bidder. See note to sec. 925—90.

Duty and liability of contractor. SECTION 925—92. All contractors doing any work which shall in any manner obstruct the streets or sidewalks shall put up and maintain barriers and lights to prevent accidents, and be liable for all damages caused by failure so to do. All contracts shall contain a provision covering this liability, and also a provision making the contractor liable for all damages caused by the negligent digging up of streets, alleys or public grounds, or which may result from his carelessness in the prosecution of such work.

Sec. 92, ch. 326, 1889.

Removal of barriers. See note to sec. 925—90.

EXHIBIT
C

News: Analysis & Commentary

possible, having symmetrical treatment for gains and dividends would be beneficial," says Brookings Institution tax economist Peter R. Orszag.

But the 50% exclusion for both dividends and capital gains being mulled in Congress would cost up to \$270 billion—on top of the \$335 billion in other "economic growth" tax cuts Bush has proposed. Deficit hawks could cut the price by trimming the exclusion to, say, 30%. Since that would cut taxes on dividends but raise them for capital gains, Treasury would lose little or no money. But the slimmed-down version would provide little stimulus and boost capital gains taxes for the wealthiest investors, making it anathema to the White House.

That's why others are getting behind a solution they believe will be easy for taxpayers and less expensive: letting families exempt, say, \$1,000 of dividends from taxes each year. Among the backers of such a cap: leading Senate moderate John B. Breaux (D-La.). It would allow roughly 8 million families to avoid both taxes and paperwork on their dividends and reduce the tax bill for millions of others, at a cost of only about \$3 billion a year. For symmetry, the first \$1,000 in capital gains could be exempted as well. The downside: It would generate no economic stimulus.

Some Democrats like an idea proposed by Urban Institute economist Leonard E. Burman. He would eliminate taxes on both dividends and gains for earnings already taxed to a company, just as the Bush plan would. But gains and dividends on all other earnings would be taxed at ordinary rates of up to 88.6%. The benefit of this approach is that it would tax gains and dividends more equally. The downside: Burman's plan would raise taxes on capital gains, an idea unlikely to generate enthusiasm at the White House.

Lawmakers will almost surely pass some investor tax cut by the end of May. It won't be hard if Congress settles on a \$500 billion revenue bill. But fitting it in the \$350 billion version will be tougher. One solution: Lawmakers are looking to close some \$50 billion in corporate tax loopholes—a step that would make room for a bigger dividend cut.

The best hope is for a skinnier exclusion for both dividends and gains. It wouldn't provide much stimulus, but it might marginally improve the tax code. And it may help get the government out of the business of subsidizing investment decisions.

By Howard Gleckman in Washington

AFTER THE WAR

IRAQ DEALS: WHO GOT WHAT—AND WHY

How the big contracts to rebuild the nation were awarded

When U.S. government agencies awarded Halliburton Co. and Bechtel Group Inc. contracts to help rebuild Iraq, observers cried foul. Lawmakers, media commentators, and even British companies complained that politics was involved: Vice-President Dick Cheney, it was noted, ran Halliburton from 1995 to 2000, and Bechtel's Republican ties reach back generations. Moreover, the critics said, deals worth billions of dollars were being handed out in a secretive process that unfairly excluded foreign competitors. Not so, say government officials who oversaw the process. The contracts were awarded by career civil servants, not political appointees, on the basis of technical merit, following strict government rules.

Who's right? To find out, *BusinessWeek* interviewed companies and officials involved as well as government procurement experts. Much misinformation is floating around, but some of the critics' claims hold up. Here's what we found:

How was Halliburton chosen?

The company was selected in an emergency process that did not involve competitive bidding. The Army Corps of Engineers gave the contract to extinguish oil well fires to Halliburton subsidiary Kellogg Brown & Root because it had the "expertise and specialized resources." KBR, for example, helped douse some 300 Kuwaiti oil fires after the first Gulf War in 1991.

What's wrong with that?

Critics say the work was added, with no competitive bidding, to an existing contract under which KBR provides logistical support to the Army. The hotel and food bills for some 250 Office of Reconstruction & Humanitarian Assistance bureaucrats, most of whom were holed up at the Kuwait Hilton resort, are paid by KBR—\$5,000 a month per person, plus a markup, says an ORHA official. "That's an inexcusable waste of money that tax-



U.S. PHOTOGRAPHS BY RICARDO GARCIA/AFR
 L'AN V.232/ARNDT/ADRIAS

payers shouldn't have to pay," says Representative Henry A. Waxman (D-Calif.), who has asked the General Accounting Office to investigate.

How was Bechtel selected?

Seven U.S. companies were secretly invited to bid in a limited competition allowed under the Foreign Assistance Act of 1961. While all seven had a track record on overseas projects in such places as Kosovo and Afghanistan, Bechtel's experience in Arabic-speaking nations carried the day. It employs more

than 1,000 people in the Mideast, it's building a \$1.7 billion aluminum smelter in Bahrain, and it's expanding a Saudi Arabia airport for \$1.5 billion.

Why were the bidders all American?

USAID officials say the law requires them to use only U.S. suppliers. In addition, each bidder had to have a type of security clearance, which no foreign company possessed, to review classified documents handed out at a pre-bid conference. Overseas companies, however, are eligible for subcontracts. Besides, one USAID official says: "Imagine the furor if we chose European companies, using American tax dollars."

USAID also says it had to limit competition because it was working under a tight deadline. In the end, it took just 63 days to complete a process that usually takes 6 months. Why the haste? For political and humanitarian reasons, the Iraq project couldn't wait, says USAID Administrator Andrew S. Natsios: "We wanted it all in place so we could begin construction immediately."

Again, what's wrong with that?

Some members of Congress say they aren't satisfied by the constantly shifting explanations for the U.S.-only requirement. They may have a point. Natsios and other USAID officials have given a variety of reasons, and some don't hold up. One USAID official says that in January, Natsios waived the America-only requirement for all contractors, not just subcontractors, as USAID had claimed. He has the authority to do so, legal experts agree. But by then tacking on a security-clearance requirement, he wound up restricting the bidders to Americans only.

Why the need for security clearances?

The government was in something of a bind. It began accepting bids in February, before hostilities broke out. If word had leaked out that the U.S. was accepting proposals to rebuild Iraq before the war began, that could have undermined efforts to find a diplomatic solution. The U.S. did not want countries opposed to war, such as France, Germany and Russia, to conclude that mili-

Kuwait hotel bills for Pentagon staff go through Halliburton unit KBR, which adds a markup

tary force was a fait accompli. So bids were sought from a limited number of companies with security clearances because they were thought to be able to keep the process confidential.

Why didn't USAID wait until the war ended?

That would have been too late. By having contractors at the ready, the U.S. can now pump billions of dollars into the shattered Iraq economy within months. And since Bechtel must hire Iraqi subcontractors and employees whenever possible, the U.S. can help jumpstart the economy by creating thousands of jobs.

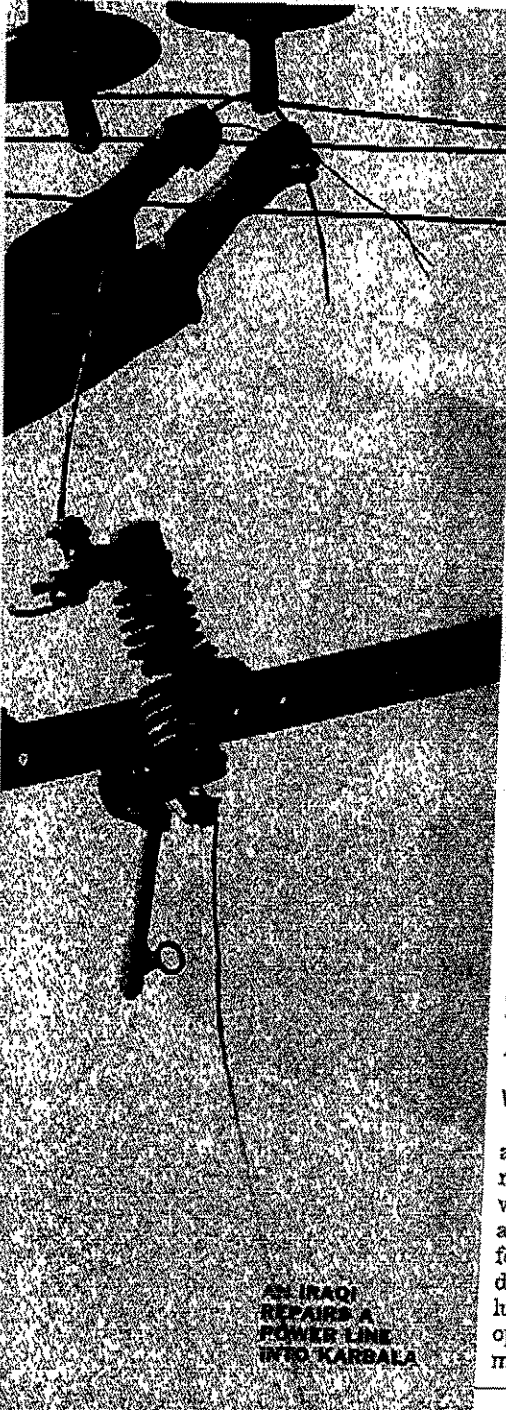
Just how lucrative are the Halliburton and Bechtel awards?

Getting the first contracts is a big advantage. A foot in the door with a new government could mean more money down the road. While some news reports pegged the value of the Halliburton deal at \$7 billion, because Saddam Hussein didn't destroy much oil property, it's likely the contract won't go above \$600 million. That means early press reports vastly overstated the ultimate value of the contract. But KBR could benefit once a privatized Iraq oil industry begins handing out oil-service contracts. Bechtel's contract, awarded on Apr. 17 by the State Dept., is worth \$680 million, though up to half that amount is expected to go to subcontractors. Bechtel could also benefit if Iraq's economy thrives and the country can embark on a massive rehabilitation program.

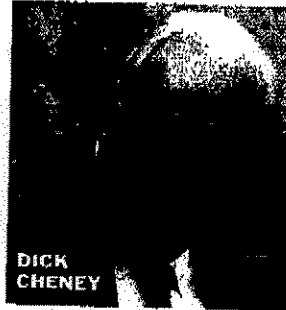
Has the bidding process created long-term damage?

Perception is everything. By locking out foreign companies, critics say, U.S. agencies may be inviting other countries to exclude American companies from public-works projects. "We're holding ourselves out as the rogues of the international bidding process," says George Washington University law professor Steven L. Schooner. "We've created a public-relations nightmare." Critics of the Bush Administration would say that's par for the course.

By Paula Dwyer in Washington, with Frederik Balfour in Kuwait City



AN IRAQI REPAIRS A POWER LINE INTO KARBALA



DICK CHENEY

TheMilwaukeeChannel.com

Former Ill. Gov. George Ryan Indicted On Corruption Charges

POSTED: 1:59 p.m. EST December 17, 2003

UPDATED: 4:42 p.m. EST December 17, 2003

CHICAGO -- Former Illinois Gov. George Ryan was indicted Wednesday on corruption charges dating back to when he was Illinois secretary of state.

He's accused of taking payoffs, gifts and vacations in return for government contracts and leases.

The investigation initially focused on bribes exchanged for licenses for unqualified truck drivers, but it was later expanded to include other corruption.

As governor, Ryan became known worldwide as a leading critic of the death penalty.

The Republican served as secretary of state from 1991 to 1999. He has said he knew there was a culture of corruption in the office, but that he was unaware of the specifics.

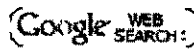
Ryan is the 66th person charged in the investigation. In all, 59 people and his campaign committee have been convicted so far.

➔ [Read The Indictment \(U.S. v. Warner and Ryan\)](#)

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FBI Probes Philadelphia City Contracts

By DAVID B. CARUSO
Associated Press Writer

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- Wisconsin
- Milwaukee
- Waukesha
- Oz/Wash
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PHILADELPHIA (AP) — At the height of the campaign that carried him into office in 1999, Mayor John Street offered encouraging words to the lawyers and entrepreneurs thinking about giving money to his campaign.

"The people who support me in the general election have a greater chance of getting business from my administration than the people who support Sam Katz," Street said of his Republican opponent.

Four years later, the FBI appears to be investigating whether the mayor kept his word without breaking the law.

The federal investigation dates back many months but only became public on Oct. 7, when police discovered listening devices that the FBI had placed in Street's City Hall office.

In the past few months, federal agents have asked several former members of the Street administration whether they were pressured into handing municipal contracts to the mayor's supporters.

FBI agents on Wednesday asked the city's former treasurer whether an attorney who specializes in government contracts, Ronald A. White, ever offered her or the mayor money in exchange for city work.

"I told them 'no,'" Folasade Olanipekun told the Philadelphia Daily News.



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In July, two agents visited the home of Louis Applebaum, the city's former procurement commissioner. They wanted to know how a \$13.6 million contract at the city-owned Philadelphia International Airport had been awarded to a company that employed the mayor's brother.

Applebaum said the firm, Philadelphia Airport Services, got the job because it offered to do the work for \$2 million less than a competitor.

Federal authorities have refused to discuss the investigation, but in recent weeks agents have sought interviews and records from several people and companies who contributed money to Street's campaigns and later received lucrative city contracts.

Much of the inquiry has focused on White, who founded two political action committees that have donated heavily to Street's campaigns, including more than \$100,000 this year.

Since Street took office, White has been involved in some of Philadelphia's biggest projects, sometimes representing companies seeking city work, and sometimes working for the city - most often as a bond lawyer.

In a recent lawsuit, Philadelphia auto dealer Biagio DeSimone said that when he needed city approval for a zoning change, White told him he should donate \$5,000 to Street's campaign, plus \$5,000 to a political action committee.

DeSimone sued when the only thing he got was an invitation to the mayor's box at an Eagles game. The city settled.

As he did in 1999, the mayor acknowledged that he gives city work to campaign contributors, but he said no one gets a job they are unqualified to perform. He said he is only following unwritten rules that have been "accepted in this country for as long as there has been government and as long as there has been patronage."

Such arrangements are not, on their face, illegal.

Pennsylvania has few limits on the contributions that business executives may make to political candidates. State procurement laws also give the mayor wide leeway in awarding no-bid contracts for "professional services" such as legal work or financial consulting.

Politicians are free to solicit campaign donations from people looking for city work, as long as they don't promise anything in return for the money.

Some of the records requested by the government date back to when current Gov. Ed Rendell was Philadelphia's mayor. Rendell said he is not concerned that the investigation might delve into his campaign activities as

Refinance

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Latest News

FBI Probes Philadelphia City Contracts

Judge to Unseal Documents in Katz Case

S.F. Acting Mayor Makes Key Appointments

Philadelphia's Mayor, GOP Rival Debate

Neo-Nazi to Run for Mayor in Idaho Town

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well.

"I have the same clear conscience that Mayor Street has," Rendell said. "We raised money, but there was never any quid pro quo."

A new poll published in Sunday editions of the Philadelphia Inquirer shows Street has a slight lead in the current mayor's race, 46 percent to 41 percent, over Katz, who he is running against again. It also found most voters said the ongoing FBI investigation would not effect their choice.

The survey of 800 likely voters was conducted Tuesday through Thursday by Mason-Dixon Polling & Researcher and had a margin of sampling error of plus or minus 3.5 percentage points.

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NEWS

Published Sunday, December 19, 1999, in the Miami Herald

Airport official steered contracts

Building chief at MIA bent bid rules

BY MANNY GARCIA AND RONNIE GREENE
lgreene@herald.com

A Miami International Airport construction chief who resigned abruptly earlier this year repeatedly dodged county bid rules, approving lucrative work for handpicked firms. Including one that employed his father-in-law and another that bankrolls political campaigns, a Herald investigation found.

Richard Mendez, 47, resigned in January as assistant aviation director overseeing the airport's \$5 billion expansion program, a job that granted him considerable power over airport contracting.

He sometimes abused his power, directing MIA contractors to hire specific subcontractors or otherwise bypassing rules meant to ensure airport contracts are awarded after competition, records show.

For example:

Mendez approved a no-bid \$126,000 airport lighting contract for Horsepower Electric in 1997, shutting out potential competitors. The Hialeah firm employed his father-in-law at the time.

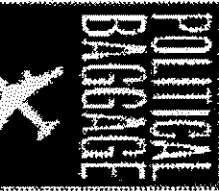
Mendez ordered architects working on the MIA expansion to hire a company for more than \$1.5 million in no-bid work providing 3-D computer models of airport expansion. The company and its top

<http://www.herald.com:80/content/sun/docs/055298.htm>



C. W. Griffith
PROBED: Richard Mendez says supervisors knew of his actions.

PREVIOUS COVERAGE



Thursday, December 23, 1999

Miami Herald: County bid procedures were violated at airport

Page: 2

executives have contributed \$190,000 to Democratic campaigns and gave several thousand to Miami-Dade Mayor Alex Penuelas in 1996. His president flew aboard President Clinton's Air Force One.

At least five other times, Mendez played a significant role in directing airport consultants to hire specific subcontractors -- in violation of rules forbidding the county from telling companies who to hire.

For example, Mendez pressed to hire one company for an \$800,000 aircraft noise monitoring system despite requests from MIA's general consultant, Dade Aviation Consultants, to seek competition.

A squad of Miami-Dade police, FBI and IRS agents is examining Mendez's bank records as part of a probe of alleged airport corruption. Mendez denies wrongdoing.

"Everything I did I thought was in the best interests of the airport," Mendez said in a brief interview at his home last week. He said supervisors were aware of his actions. "It's easy to blame me now that I'm gone. I can tell you I have not done anything illegal."

Mendez, now operating a private aviation consulting firm, declined to answer specific questions about the contracts.

After working as a supervisor in the county's Public Works Department, Mendez joined the airport staff in early 1995 as an assistant director.

POSSIBLE CONFLICT

He was personally tapped for the job by Armando Vidal, county manager at the time, who had worked with him at public works and who reported to Miami-Dade commissioners as the county's top administrator.

While at public works, Mendez had dealings with Horsepower Electric, which has received more than \$16.7 million in county contracts since 1991. Records show he had a role in approving millions of dollars in work orders for the company.

In 1994, a colleague noted that Mendez had a possible conflict because his father-in-law worked as a Horsepower mechanic's helper, county records show. Osvaldo Costa has worked for Horsepower since 1992.

Still, Mendez continued hands-on dealings with Horsepower after he became the airport's point person for construction.

On March 21, 1997, he approved a no-bid contract for Horsepower to install street lighting at Lejeune Road and Northwest 36th Street near MIA.

Scrawled on a memo setting the contract in motion: "Approved by Richard Mendez, PE, Assistant Director Aviation Department on 3/21/97."

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BID PROCESS

Miami-Dade administrators said the \$126,000 contract should have been put to bid.

"He should have bid that. It's always best to put it out for bid," said Assistant Public Works Director Eduardo Vega.

The county charter states all contracts or purchases greater than \$100,000 "shall be secured" via sealed bids.

But in the real world of government, that rule is sometimes bypassed to expedite work, said Assistant County Attorney Bob Cuevas. Still, Cuevas said: "How do you know if you are getting the best price unless you put it out to bid?"

Rather than seek bids, Mendez tapped an existing public works contract held at the time by Horsepower. A public works official asked Horsepower for a proposal, and Mendez signed off.

Mendez said the work was needed quickly because the site was unstable and susceptible to flooding due to poor drainage. "Accessibility and safety problems due to poorly lit and unevenly graded areas are of great concern," he wrote in a memo at the time.

Competitors were shut out.

"If we were aware of it, we would have bid," said James Hardemon, manager for American Lighting & Signalization, which also had a public works contract at the time.

MIA instead approved a proposal submitted by Horsepower President Hector P. Ortiz, who is a friend of Mendez's family, according to Mendez.

Horsepower is a steady donor to Miami-Dade political races. The firm, its principals and related businesses have contributed at least \$12,000 since 1996. Penelas received the most, \$4,000.

NO CONFLICT

In a letter to The Herald, Ortiz said the company obtained all of its work through public bidding and disputed any conflict of interest. He described Costa, Mendez's relative, as a "helper in our truck maintenance department" who was hired through an "open selection process."

"We do not consider Mr. Costa's employment a conflict with our work with Dade County, since he did not perform any work for Dade County and he has no interest in the company."

Ortiz questions the notion that the \$126,000 job was no-bid, saying his firm had won its public works contracts through a public bid process. He said his family has long been involved in "community, charity and political activities," but that those have no impact on his business.

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EMBARRASSMENTS

Beyond the Horsepower contract, Mendez's MIA tenure was marked by controversy.

He was known as a hard-driving director who drew praise in some quarters, but MIA suffered several embarrassments on his watch. One involved a basic car wash that ballooned to a \$1.5 million boondoggle, costing nearly \$1 million more than county experts anticipated. The Herald reported last year. Mendez personally approved the price after his staff balked.

Another involved an overpriced parking garage, known as Park 7, part of MIA's Dolphin garage. The county spent \$23,000 per space to build the garage and resolve construction flaws, far above the typical \$13,000 spent elsewhere, The Herald reported in October.

Mendez pushed for a higher payout to Odebrecht Contractors of Florida than airport consultants suggested. Miami-Dade Commissioner Natacha Millan held negotiating sessions to help prod the county to settlement; her office said she merely wanted to resolve a lingering dispute, and that her ties to Odebrecht lobbyists were not a factor.

HATED POLITICS

Mendez, paid \$127,000 annually, teared up earlier this year when a reporter asked why he was leaving before he could collect a full pension. He said he was sick of the snail's pace of moving a project through County Hall -- and the politics that are often to blame.

"I have a lot of qualified architects and engineers who come to me and say they want to do work with the county. And they ask me, 'What lobbyist should I hire to get the job?' That is not the way to do business," he said.

Mendez described MIA's culture in a letter to The Herald earlier this year as the paper examined his role in several projects.

"The airport is a clique and a hornet's nest of employees, consultants, contractors and vendors with each concerned simply with their own respective agenda without regard or concern to the mission of improving MIA," Mendez wrote.

AT THE CENTER

But county records show Mendez was sometimes at the center of activity. At least a half-dozen times he was involved in directing contractors to hire specific subcontractors for work in violation of county rules.

"It is completely inappropriate and unacceptable for (airport) staff to select subconsultants to be used by a consultant," a county attorney opinion states.

Engineering & Construction Services, creator of 3-D computer programs, is one example. Mendez directed architects working for the airport to hire ECS for more than \$1.5 million in no-bid work, records

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show.

Mendez said the company was on the airport payroll when he arrived in 1995, and it made sense to expand its virtual reality tours of airport renovation projects.

The programs help MIA "identify potential change order situations," he wrote earlier this year. "Such proactive measures can potentially save millions."

Mendez's directives to hire ECS broke county rules.

"It was not done properly or following county procedures," said Airport Director Gary Dellapa. "We should never be directing consultants which subcontractor to engage. We should never be directing -- ever."

Dellapa said he likes the 3-D programming, but, "You pick those through a competitive process."

In subsequent contracts, there was no competition -- just directives from Mendez, who told architects and consultants to put ECS to work creating 3-D models on five different airport projects.

Mendez pressed ahead despite questions from staff, and though one architect told The Herald "we didn't use it."

"I still think that the cost is high, but Richard told me to go ahead with it," airport planner Manuel Rodriguez wrote on one ECS job.

CAMPAIGN FUNDS

Beyond contributions to the Democratic National Committee, ECS, company President M.J. Parker, staff members and associates gave \$4,000 to Mayor Penelas' 1996 campaign. At least \$2,500 went to the mayor's opponent, Arthur Teale.

Parker said she won her airport contracts on merit, not politics. The company does a good job, she said. "I don't know of anyone doing it with the expertise we have."

In 1996 and 1997, the company's lobbyist was Christopher Korge, a major DNC fund-raiser who helps bankroll campaigns for Penelas and other county politicians. Korge said he didn't help the firm win airport work. He did, however, try to broaden ECS' airport contract to the seaport, contacting Mendez and former manager Vidal.

NO-BID WORK

Records compiled in a county audit cite five other cases in which Mendez played a key role in nearly \$1.5 million of no-bid airport work.

In memos, Mendez said he needed to move quickly to resolve urgent issues, and that he tapped qualified firms.

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Instead of seeking bids, he directed -- or approved by signature -- having airport consultant Dade Aviation Consultants hire specific subcontractors for specific jobs.

Mendez told DAC to pay \$800,000 to Harris, Miller, Miller & Hanson for aircraft noise monitoring equipment, though DAC repeatedly pushed for competition. Company official Andrew Harris did not return three calls seeking comment.

In two other cases, Mendez directed no-bid contracts to experts to help resolve construction problems with the troubled parking garage, records show. He approved a no-bid planning contract for another consultant.

In a fifth case, Mendez told DAC to hire Ricordo & Associates for \$250,000 worth of airfield studies and planning work in 1997. Bypassing bids, Mendez called the firm "uniquely qualified" because of its prior work. Auditors said this route "bypassed established competitive hiring" procedures.

"As a matter of policy, we don't talk about our contractual relationships unless the request comes from the client," said firm President Ramon Ricordo, whose Chicago company contributed a few thousand dollars to recent county races.

Auditors examined the contracts last year in a broader review of the DAC contract.

"Acquiring these services through DAC, bypassing county procedures, undermines the credibility of the procurement process and may subject these transactions to claims of impropriety," auditors concluded.

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Corruption

GUILTY PLEA IN BID-RIG SCHEME

PHOTO COURTESY OF CLARK COURT OPERATIONAL SERVICES

AN EMPLOYEE WHO RAN COURT CONSTRUCTION projects for the Dormitory Authority of the State of New York has pleaded guilty to running a kickback and bid-rigging scheme that netted him more than \$500,000. The employee, John Wilson, was the chief of New York City court projects since 1998 and had worked for the dormitory authority for 12 years.

According to Manhattan District Attorney Robert Morgenthau, the scheme involved another dormitory

authority employee who was the project manager on some of the court projects and was supervised by Wilson.

Wilson, who is 68, and his attorney could not be reached for comment. He is no longer employed by the dormitory authority, says a spokesman for the agency.

On April 18, Morgenthau announced that Wilson had pleaded guilty to one count of second degree grand larceny and may be sentenced to from three to nine years in state prison.

Wilson admitted that from January 1997 to April 2000, B & B Construction, a company secretly owned by another dormitory authority employee, provided fraudulent invoices to vendors, some of whom had received their contracts through bid-rigging. The fraudulent charges were included in requisitions to the dormitory authority and were paid by the authority after being approved by Wilson and the project manager. Another version of the scheme occurred when B&B Construction successfully bid for dormitory authority contracts and submitted inflated invoices approved by Wilson and his co-conspirator.

The projects involved include courts in Manhattan, the Bronx, Queens and Staten Island.

20 ENR/MAY 8, 2000

Design flaw

Daily Reporter
OUR VIEW
EDITORIAL

A design/build bill is in the works that would give the Milwaukee Metropolitan Sewerage District authority to use the delivery method on projects valued at more than \$4 million.

But neither district officials nor Sen. Alberta Darling, R-River Hills, the proposed bill's sponsor, are willing to discuss the draft legislation.

For that reason, it's difficult to know the reasons behind the bill - and why the district should be singled out as the only public owner that would be allowed to, essentially, waive the competitive bid law on larger projects.

In the past, district officials have said the use of design/build saves time and, hence, money.

We don't entirely buy that argument, but we're at least willing to concede that may be true in some instances.

But in the past, the MMSD has only been allowed to use the method in emergency situations - such as when flooding threatened homeowners in the Lincoln Creek area for two years running.

It only seemed logical to use whatever means and method available to prevent further flooding in the area. People's homes were at stake.

But now, the MMSD, without providing explanation, wants to expand design/build's use. And frankly, we can't think of a good enough reason for the bill to proceed.

If design/build does, indeed, save time and money in each and every situation (and that we know is not the case), why not expand it industrywide?

There are some who would argue that the MMSD has on staff qualified designers and engineers, making design/build a more plausible option for the district as opposed to, say, a small Wisconsin town without the wherewithal to carry a project from start to finish.

But if that's the case, why wouldn't the state departments of Administration and Transportation be allowed to use it on every one of their projects, especially considering the budget shortfall Wisconsin's facing? Surely, their staffs are as capable as the MMSD's, right?

Here's why - and here's why the bill should not become law: It gives preferential treatment - and too much power - to the taxpayer-funded MMSD.

The state's competitive bid law was enacted to help ensure that agencies that use taxpayer money be vigilant stewards of those dollars. Elevating the district to a position above that standard doesn't seem like good public policy to us.

6/15/03

10/27/03
Journal/Sentinel

FBI probing Philadelphia city contracts

Mayor said he'd favor campaign contributors; was it quid pro quo?

By DAVID B. CARUSO
Associated Press

Philadelphia — At the height of the campaign that carried him into office in 1999, Mayor John Street offered encouraging words to the lawyers and entrepreneurs thinking about giving money to his campaign.

"The people who support me in the general election have a greater chance of getting business from my administration than the people who support Sam Katz," Street said of his Republican opponent.

Four years later, the FBI appears to be investigating whether the mayor kept his word without breaking the law.

The federal investigation dates back many months but only became public on Oct. 27, when police discovered listening devices that the FBI had placed in Street's City Hall office.

In the past few months, federal agents have asked several former members of the Street administration whether they were pressured into handing municipal contracts to the mayor's supporters.

FBI agents on Wednesday asked the city's former treasurer whether an attorney who specializes in government contracts, Ronald A. White, ever offered her or the mayor money in exchange for city work.

"I told them 'No,'" Folasade Olamipekun told the Philadelphia Daily News.

In July, two agents visited the home of Louis Applebaum, the city's former procurement commissioner. They wanted to know how a \$13.6 million contract at the city-owned Philadelphia International Airport had been awarded to a company that employed the mayor's brother.