

1999 SENATE BILL 198

June 17, 1999 – Introduced by Senators GEORGE, HUELSMAN, ROESSLER, FARROW and RUDE, cosponsored by Representatives RILEY, MUSSER, COLON, CARPENTER and GRONEMUS. Referred to Committee on Economic Development, Housing and Government Operations.

1 **AN ACT to amend** 59.52 (29) (a), 60.47 (2) (a), 60.47 (2) (b), 60.47 (5), 61.55, 62.03
2 (1), 62.15 (1), 66.24 (5) (d), 66.904 (2) (a), 66.904 (2) (e) and 281.41 (1); and **to**
3 **create** 59.52 (29) (c) to (e), 60.47 (2m), 62.15 (1m), 66.24 (5) (e), 66.904 (2) (am)
4 and 281.01 (3e) of the statutes; **relating to:** authorizing cities, villages, towns,
5 counties, metropolitan sewerage districts, technical colleges and federated
6 public libraries to let public works contracts under the design-build
7 construction process, changing the threshold amounts that require competitive
8 bidding under public works contracts and providing an exemption from
9 competitive bidding requirements.

Analysis by the Legislative Reference Bureau

In general, under current law, before a contract for public construction with a value that exceeds \$5,000 but does not exceed \$20,000 may be let by a county, a class 1 notice of the proposed construction must be given by the county board. Also under current law, before a contract for public construction with a value that exceeds \$5,000 but does not exceed \$10,000 may be let by a municipality (2nd, 3rd or 4th class city, or a village or town), a class 1 notice of the proposed construction must be given by the municipality's governing body. Before a contract for public construction with a

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value that exceeds \$20,000 may be let by a county, or exceeds \$10,000 in the case of a municipality, certain other requirements, such as a lowest responsible bidder requirement, must be met. A county board, by a three-fourths vote of its membership, may also authorize the county itself to perform any class of public work if the estimated cost of the work exceeds \$20,000.

This bill authorizes municipalities, 1st class cities (presently only Milwaukee), counties, metropolitan sewerage districts, technical colleges and federated public library systems (local governmental units) to let a contract for public construction, the estimated cost of which exceeds \$1,000,000, using the design-build construction process, which is defined as a procurement process under which the engineering, design and construction services are provided by a single entity.

If a local governmental unit wishes to construct a public work using the design-build construction process, the local governmental unit must use a two stage selection process. Under the first stage, the local governmental unit must publish a notice that includes a project statement that describes the space needs and design goals for the project, detailed submission requirements, selection procedures, the composition of the selection panel and whether the local governmental unit will offer a stipend to unsuccessful design-build teams and, if so, the amount of the stipend.

Following receipt of the bids, the local governmental unit must select five or less design-build teams to participate in the second stage of the selection process. The selection of the finalist teams in the first stage of the process must be based on factors that include the background, experience and qualifications of the members of the teams and the quality of the initial proposal.

In the second stage of the selection process, the local governmental unit must choose from among the five or less finalist teams if the unit determines that at least one of the finalists will be able to construct the public work in a way that is satisfactory to the unit. The local governmental unit must conduct interviews of each team, and each team must make a presentation. The criteria to be used in making a final selection may include the quality of the proposed design, the extent to which a proposal demonstrates compliance with the project statement, the estimated cost of the project and a guaranteed maximum price for the project. If the local governmental unit enters into a contract with one of the teams, that design-build team must obtain bonding to guarantee completion of the project.

The bill also increases the threshold amount that requires competitive bidding on public works contracts to \$20,000 for municipalities and metropolitan sewerage districts that contain a 1st class city and, for municipalities, exempts from competitive bidding public works contracts in which the building materials or labor is donated.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 **SECTION 1.** 59.52 (29) (a) of the statutes is amended to read:

2 59.52 **(29)** (a) All Except as provided in par. (c) 2., all public work, including any
3 contract for the construction, repair, remodeling or improvement of any public work,
4 building, or furnishing of supplies or material of any kind where the estimated cost
5 of such work will exceed \$20,000 shall be let by contract to the lowest responsible
6 bidder. Any public work, the estimated cost of which does not exceed \$20,000, shall
7 be let as the board may direct. If the estimated cost of any public work is between
8 \$5,000 and \$20,000, the board shall give a class 1 notice under ch. 985 before it
9 contracts for the work or shall contract with a person qualified as a bidder under s.
10 66.29 (2). A contract, the estimated cost of which exceeds \$20,000, shall be let and
11 entered into under s. 66.29, except that the board may by a three-fourths vote of all
12 the members entitled to a seat provide that any class of public work or any part
13 thereof may be done directly by the county without submitting the same for bids.
14 This subsection does not apply to highway contracts which the county highway
15 committee or the county highway commissioner is authorized by law to let or make.

16 **SECTION 2.** 59.52 (29) (c) to (e) of the statutes are created to read:

17 59.52 **(29)** (c) 1. In this subsection, “design–build construction process” means
18 a procurement process under which the engineering, design and construction
19 services are provided by a single entity under a process described under par. (d).

20 2. Any public works contract described in par. (a), the estimated cost of which
21 exceeds \$1,000,000, may be let using the design–build construction process.

22 (d) If a county wishes to construct a public work using the design–build
23 construction process, the county shall use a selection process that contains the
24 following procedures:

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1 1. The county shall issue a request for proposals from design–build teams by
2 publishing a class 1 notice under ch. 985. The notice shall include a project statement
3 that describes the space needs and design goals for the project, detailed submission
4 requirements, selection procedures, site information, an outline of specifications for
5 the project, a budget for the project, a project schedule, the composition of the
6 selection panel, the approximate amount of the bond that the county will require
7 under par. (e) and whether the county will offer a stipend to unsuccessful
8 design–build teams and, if so, the amount of the stipend.

9 2. Following receipt of the proposals, the county shall select 5 or less
10 design–build teams to participate in the final stage of the selection process. The
11 selection of teams under this subdivision shall be based on factors that include the
12 background, experience and qualifications of the members of the teams; the financial
13 strength and surety capacity of the teams; the quality of the initial proposal; and the
14 past performance and current workload of the teams. The county selection panel
15 that selects the teams under this subdivision for the final selection process under
16 subd. 3. may include design and construction professionals who work for the county
17 or are hired by the county to assist in the selection, members of the county board and
18 representatives from the county entity that will use the facility that is to be
19 constructed under the selection process described in this paragraph.

20 3. The county shall make a final selection from among the teams selected under
21 subd. 2. if the county determines that at least one of the teams selected as a finalist
22 under subd. 2. will be able to construct the public work in a way that is satisfactory
23 to the county. The final selection shall be made following interviews and
24 presentations from the finalists, based on criteria that are published as a class 1
25 notice under ch. 985. The notice shall state the weight that is given to each criterion.

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1 The criteria to be used in making a final selection under this subdivision may include
2 the quality of the proposed design, the construction approach to be used to complete
3 the project, the extent to which a proposal demonstrates compliance with the project
4 statement described under subd. 1., the proposed management plan for the project,
5 the estimated cost of the project and a guaranteed maximum price for the project.

6 (e) If the county selects a design–build team under par. (d) 3. and enters into
7 a contract for the construction of the project, the design–build team shall obtain
8 bonding, in an amount specified by the county, to guarantee completion of the project
9 according to the terms of the contract.

10 **SECTION 3.** 60.47 (2) (a) of the statutes is amended to read:

11 60.47 (2) (a) No town may enter into a public contract with an estimated cost
12 of more than \$5,000 but not more than ~~\$10,000~~ \$20,000 unless the town board, or a
13 town official or employe designated by the town board, gives a class 1 notice under
14 ch. 985 before execution of that public contract.

15 **SECTION 4.** 60.47 (2) (b) of the statutes is amended to read:

16 60.47 (2) (b) No town may enter into a public contract with a value of more than
17 ~~\$10,000~~ \$20,000 unless the town board, or a town official or employe designated by
18 the town board, advertises for proposals to perform the terms of the public contract
19 by publishing a class 2 notice under ch. 985. The town board may provide for
20 additional means of advertising for bids.

21 **SECTION 5.** 60.47 (2m) of the statutes is created to read:

22 60.47 (2m) DESIGN–BUILD CONTRACTS. Any public contract under sub. (2), the
23 estimated cost of which exceeds \$1,000,000, may be let using the design–build
24 construction process, as defined in s. 59.52 (29) (c) 1. Section 59.52 (29) (d) and (e),
25 as it applies to counties, applies to towns.

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1 **SECTION 6.** 60.47 (5) of the statutes is amended to read:

2 **60.47 (5) EXCEPTION FOR EMERGENCIES AND DONATED MATERIALS AND LABOR.** This
3 section is optional with respect to public contracts for the repair and construction of
4 public facilities when damage or threatened damage to the facility creates an
5 emergency, as declared by resolution of the town board, that endangers the public
6 health or welfare of the town. This subsection no longer applies when the town board
7 declares that the emergency no longer exists. This section is optional with respect
8 to a public contract if the materials related to the contract are donated or if the labor
9 that is necessary to execute the public contract is provided by volunteers.

10 **SECTION 7.** 61.55 of the statutes is amended to read:

11 **61.55 Contracts involving over \$10,000; how let; exception.** All contracts
12 for public construction, in any such village, exceeding \$10,000 \$20,000, shall be let
13 by the village board to the lowest responsible bidder in accordance with s. 66.29
14 insofar as said section may be applicable. If the estimated cost of any public
15 construction exceeds \$5,000, but is not greater than \$10,000 \$20,000, the village
16 board shall give a class 1 notice, under ch. 985, of the proposed construction before
17 the contract for the construction is executed. This provision does not apply to public
18 construction if the materials for such a project are donated or if the labor for such a
19 project is provided by volunteers, and this provision and s. 281.41 are not mandatory
20 for the repair and reconstruction of public facilities when damage or threatened
21 damage thereto creates an emergency, as determined by resolution of the village
22 board, in which the public health or welfare of the village is endangered. Whenever
23 the village board by majority vote at a regular or special meeting declares that an
24 emergency no longer exists, this exemption no longer applies. Any contract for public
25 construction under this section, the estimated cost of which exceeds \$1,000,000, may

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1 be let using the design–build construction process, as defined in s. 59.52 (29) (c) 1.
2 Section 59.52 (29) (d) and (e), as it applies to counties, applies to villages.

3 **SECTION 8.** 62.03 (1) of the statutes is amended to read:

4 62.03 (1) This subchapter, except ss. 62.071, 62.08 (1), 62.09 (1) (e) and (11) (j)
5 and (k), 62.15 (1m) (b), 62.175 and 62.23 (7) (em) and (he), does not apply to 1st class
6 cities under special charter.

7 **SECTION 9.** 62.15 (1) of the statutes is amended to read:

8 62.15 (1) CONTRACTS; HOW LET; EXCEPTION FOR DONATED MATERIALS AND LABOR. All
9 public construction, the estimated cost of which exceeds \$10,000 \$20,000, shall be let
10 by contract to the lowest responsible bidder; all other public construction shall be let
11 as the council may direct. If the estimated cost of any public construction exceeds
12 \$5,000 but is not greater than \$10,000 \$20,000, the board of public works shall give
13 a class 1 notice, under ch. 985, of the proposed construction before the contract for
14 the construction is executed. This provision does not apply to public construction if
15 the materials for such a project are donated or if the labor for such a project is
16 provided by volunteers. The council may also by a vote of three–fourths of all the
17 members–elect provide by ordinance that any class of public construction or any part
18 thereof may be done directly by the city without submitting the same for bids.

19 **SECTION 10.** 62.15 (1m) of the statutes is created to read:

20 62.15 (1m) DESIGN–BUILD CONTRACTS. (a) Any contract for public construction
21 under sub. (1), the estimated cost of which exceeds \$1,000,000, may be let using the
22 design–build construction process, as defined in s. 59.52 (29) (c) 1. Section 59.52 (29)
23 (d) and (e), as it applies to counties, applies to cities.

24 (b) Any contract for public construction, the estimated cost of which exceeds
25 \$1,000,000, let by a 1st class city may be let using the design–build construction

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1 process, as defined in s. 59.52 (29) (c) 1. Section 59.52 (29) (d) and (e), as it applies
2 to counties, applies to 1st class cities.

3 **SECTION 11.** 66.24 (5) (d) of the statutes is amended to read:

4 66.24 (5) (d) *Bids.* Whenever plans and specifications for any facilities have
5 been completed and approved by the commission and by any other agency which
6 must approve the plans and specifications, and the commission has determined to
7 proceed with the work of the construction thereof, it shall advertise by a class 2 notice
8 under ch. 985, for bids for the construction of the facilities. Contracts for the work
9 shall be let to the lowest responsible bidder, except for contracts awarded under par.
10 (e). or the agency may reject any and all bids and if in its discretion the prices quoted
11 are unreasonable, the bidders irresponsible or the bids informal, it may readvertise
12 the work or any part of it. All contracts shall be protected by such bonds, penalties
13 and conditions as the district shall require. The commission may itself do any part
14 of any of the works.

15 **SECTION 12.** 66.24 (5) (e) of the statutes is created to read:

16 66.24 (5) (e) *Design-build contracts.* Any contract for public construction
17 under this subsection, the estimated cost of which exceeds \$1,000,000, may be let
18 using the design-build construction process, as defined in s. 59.52 (29) (c) 1. Section
19 59.52 (29) (d) and (e), as it applies to counties, applies to districts.

20 **SECTION 13.** 66.904 (2) (a) of the statutes is amended to read:

21 66.904 (2) (a) Except for a contract awarded under par. (am) and except as
22 provided in par. (b), all work done and all purchases of supplies and materials by the
23 commission shall be by contract awarded to the lowest responsible bidder complying
24 with the invitation to bid, if the work or purchase involves an expenditure of \$7,500
25 \$20,000 or more. If the commission decides to proceed with construction of any sewer

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1 after plans and specifications for the sewer are completed and approved by the
2 commission and by the department of natural resources under ch. 281, the
3 commission shall advertise by a class 2 notice under ch. 985 for construction bids.
4 All contracts and the awarding of contracts are subject to s. 66.29, except for a
5 contract awarded under par. (am).

6 **SECTION 14.** 66.904 (2) (am) of the statutes is created to read:

7 66.904 (2) (am) Any contract for public construction under sub. (1), the
8 estimated cost of which exceeds \$1,000,000, may be let using the design–build
9 construction process, as defined in s. 59.52 (29) (c) 1. Section 59.52 (29) (d) and (e),
10 as it applies to counties, applies to the district.

11 **SECTION 15.** 66.904 (2) (e) of the statutes is amended to read:

12 66.904 (2) (e) Paragraphs (a) to and (b) to (d) do not apply to contracts awarded
13 under s. 66.905. Paragraph (am) applies to contracts awarded under s. 66.905.

14 **SECTION 16.** 281.01 (3e) of the statutes is created to read:

15 281.01 (3e) “Design–build construction process” has the meaning given in s.
16 59.52 (29) (c) 1.

17 **SECTION 17.** 281.41 (1) of the statutes is amended to read:

18 281.41 (1) Except as provided under sub. (2), every owner, within the time
19 prescribed by the department, shall file with the department a certified copy of
20 complete plans of a proposed system or plant or extension thereof, in scope and detail
21 satisfactory to the department, and, if required, of existing systems or plants, and
22 such other information concerning maintenance, operation and other details as the
23 department requires, including the information specified under s. 281.35 (5) (a), if
24 applicable. Owners contracting for a system, plant or extension under the
25 design–build construction process may submit to the department performance

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1 objectives and preliminary designs in a form that is satisfactory to the department,
2 rather than complete plans. Material changes with a statement of the reasons shall
3 be likewise submitted. Before plans are drawn a statement concerning the
4 improvement may be made to the department and the department may, if requested,
5 outline generally what it will require. Upon receipt of such plans for approval, the
6 department or its duly authorized representative shall notify the owner of the date
7 of receipt. Within 90 days from the time of receipt of complete plans or within the
8 time specified in s. 281.35 (5) (c), if applicable, the department or its authorized
9 representative shall examine and take action to approve, approve conditionally or
10 reject the plans and shall state in writing any conditions of approval or reasons for
11 rejection. Approval or disapproval of such plans and specifications shall not be
12 contingent upon eligibility of such project for federal aid. The time period for review
13 may be extended by agreement with the owner if the plans and specifications cannot
14 be reviewed within the specified time limitation due to circumstances beyond the
15 control of the department or in the case of extensive installation involving
16 expenditures of \$350,000 or more. The extension shall not exceed 6 months. Failure
17 of the department or its authorized representative to act before the expiration of the
18 time period allowed for review shall constitute an approval of the plans, and upon
19 demand a written certificate of approval shall be issued. Approval may be subject
20 to modification by the department upon due notice. Construction or material change
21 shall be according to approved plans only. The department may disapprove plans
22 which are not in conformance with any existing approved areawide waste treatment
23 management plan prepared pursuant to the federal water pollution control act, P.L.
24 92–500, as amended, and shall disapprove plans that do not meet the grounds for
25 approval specified under s. 281.35 (5) (d), if applicable. The department shall require

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1 each person whose plans are approved under this section to report that person's
2 volume and rate of water withdrawal, as defined under s. 281.35 (1) (m), and that
3 person's volume and rate of water loss, as defined under s. 281.35 (1) (L), if any, in
4 the form and at the times specified by the department.

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(END)