LRB-4177

2003 DRAFTING REQUEST

Bill

Received: **02/02/2004**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Gunderson (608) 266-3363**

By/Representing: **Mike**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Munis - 1st class cities only**
Munis - sewerage districts

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gunderson@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Design-build construction process for the Milwaukee Metropolitan Sewerage District (MMSD)

Instructions:

Assembly companion based on SSA 1 (s0324/1) to SB 347

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers 02/02/2004	jdyer 02/03/2004		_____ _____			Local
/1			pgreensl 02/03/2004	_____ _____	mbarman 02/03/2004	mbarman 02/03/2004	

FE Sent For:

<END>

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<END>

2003 – 2004 LEGISLATURE

LRBs0824/1
MES:cmh/jld/cs:jf

SENATE SUBSTITUTE AMENDMENT 1, TO 2003 SENATE BILL 347

January 28, 2004 – Offered by Senator DARLING.

AN ACT *to amend* 200.47 (2) (a), 200.47 (2) (e) and 281.41 (1) (a); and *to create* 200.47 (2) (bm), 200.47 (2) (f) to (k) and 281.01 (3e) of the statutes; **relating to:** authorizing the use of the design–build construction process for the Milwaukee Metropolitan Sewerage District.

Analysis by the Legislative Reference Bureau

This substitute amendment authorizes the Milwaukee Metropolitan Sewerage District (MMSD) to let not more than five contracts for public construction using the design–build construction process, which is defined as a project delivery and procurement process for the design, construction, repair, renovation, installation, or demolition of a public works project under which a single entity is responsible for the professional design services and construction services related to the project. Under the substitute amendment, the design–build construction process may be used only for contracts, the estimated cost of which exceeds $4,000,000, and the combined total cost of all five contracts may not exceed $60,000,000.

If MMSD wishes to construct a public work using the design–build construction process, MMSD must use a two–stage selection process. Under the first stage, MMSD must publish a notice that includes a project statement that describes the project requirements, performance criteria, and design goals for the project, detailed submission requirements, selection procedures, selection criteria, the composition of the selection panel, and whether the district will offer a stipend to unsuccessful

design–build teams and, if so, the amount of the stipend. If the public work is for the construction of underground facilities, MMSD must also prepare a geotechnical report, which must be issued as part of the first stage of the selection process.

Following receipt of the bids, MMSD must select no more than three prospective 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 statement of qualifications and the conceptual project approach proposal.

In the second stage of the selection process, MMSD must choose from among the finalist teams if MMSD determines that at least one of the finalists will be able to construct the public work in a way that is satisfactory to MMSD. MMSD 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 amount of participation of a disadvantaged business, and the contract price for the project. If MMSD enters into a contract with one of the teams, that design–build team must obtain bonding for the construction–related portions of the contract to guarantee completion of the project.

If the public work involves the construction of underground facilities, the contract must have a differing site conditions clause. If the contractor discovers any of a number of physical conditions at the site that differ materially from the conditions stated in the contract or from conditions that are ordinarily encountered in work to which the contract applies, the contractor must promptly notify MMSD in writing. MMSD must then investigate the conditions. If MMSD agrees with the contractor's assessment of the conditions and MMSD determines that the differing site conditions will increase or decrease the contractor's costs or time spent to perform the work under the contract, MMSD must make an equitable adjustment to the contract.

Under current law, the Milwaukee County board may let a contract for the construction of a sheriff's department training academy using the design–build construction process, although the process is not defined.

FE-L

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

1 **SECTION 1.** 200.47 (2) (a) of the statutes is amended to read:

2 200.47 **(2)** (a) Except <u>for a contract awarded under pars. (f) to (k) and except</u>
3 as provided in par. (b), all work done and all purchases of supplies and materials by
4 the commission shall be by contract awarded to the lowest responsible bidder
5 complying with the invitation to bid, if the work or purchase involves an expenditure

of $20,000 or more. If the commission decides to proceed with construction of any sewer after plans and specifications for the sewer are completed and approved by the commission and by the department of natural resources under ch. 281, the commission shall advertise by a class 2 notice under ch. 985 for construction bids. All contracts and the awarding of contracts are subject to s. 66.0901, except for a contract awarded under pars. (f) to (k).

SECTION 2. 200.47 (2) (bm) of the statutes is created to read:

200.47 **(2)** (bm) The design–build team selected by the commission under par. (g) 3. shall advertise the work to be performed, other than design services or work that is to be performed by the design–build team itself, which involves an expenditure of $20,000 or more, as a class 2 notice under ch. 985. Publicly, the design–build team shall open the bids, review the bids, and award the contract to the lowest responsible bidder. The commission shall at all times have access to the bids.

SECTION 3. 200.47 (2) (e) of the statutes is amended to read:

200.47 **(2)** (e) Paragraphs (a) to (d) do not apply to contracts awarded under s. 200.49. Paragraphs (f) to (k) do apply to contracts awarded under s. 200.49.

SECTION 4. 200.47 (2) (f) to (k) of the statutes are created to read:

200.47 **(2)** (f) In this subsection:

1. "Conceptual project approach proposal" means a written statement that outlines the design–build team's understanding of the project, identifies the permit requirements of the project, and describes which general tasks will be performed by each member of the design–build team.

2. "Design–build construction process" means a project delivery and procurement process for the design, construction, repair, renovation, installation, or

1 demolition of a public works project under which a single entity is responsible for the
2 professional design services and construction services related to the project.

3 3. "Design–build team" means a single entity that is responsible for a project
4 that is undertaken using a design–build construction process.

5 4. "Disadvantaged business" means a business that meets the eligibility
6 criteria under s. 84.076 (1) (b) or is a small business with a gross income in the 12
7 months preceding the submission of a statement of qualifications as described in par.
8 (g) 1. of not more than $2,500,000.

9 5. "Professional design services" means design services provided by an entity
10 that includes at least one architect, as defined in s. 443.01 (1), at least one
11 professional engineer, as defined in s. 443.01 (7), and any other professionals licensed
12 by this or any other state that are required by the commission.

13 (g) If the commission wishes to construct a public work under par. (k) using the
14 design–build construction process, the commission shall, subject to par. (h), use a
15 selection process that contains the following procedures:

16 1. The commission shall issue a request for a statement of qualifications and
17 a conceptual project approach proposal from prospective design–build teams by
18 publishing a class 1 notice under ch. 985. The notice shall include a project statement
19 that describes the project requirements, performance criteria, and project design
20 goals; detailed submission requirements; selection procedures; selection criteria,
21 including consideration of disadvantaged businesses; site information; an outline of
22 specifications for the project; a budget for the project; a project schedule; the
23 composition of the selection panel; the approximate amount of the bond, consistent
24 with ss. 779.14 to 779.17, that the commission will require under par. (i); and

whether the commission will offer a stipend to unsuccessful prospective design–build teams and, if so, the amount of the stipend.

2. Following receipt of the statement of qualifications and the conceptual project approach proposal, the commission shall select no more than 3 prospective design–build teams to participate in the final stage of the selection process. The selection of teams under this subdivision shall be based on factors that include the background, experience, and qualifications of the members of the teams; the amount of participation of disadvantaged businesses; the financial and surety capacity of the teams; the statement of qualifications and the conceptual project approach proposal; and the past performance and available resources of the teams. The commission selection panel that selects the teams under this subdivision for the final selection process under subd. 3. shall include a professional engineer, as defined in s. 443.01 (7), who is a faculty member at a Wisconsin university or college that has been accredited by the Accreditation Board for Engineering and Technology, and the municipal engineer, or his or her designee, of the municipality where the majority of the public work is to be located, and may include commissioners or design and construction professionals who work for the commission or are hired by the commission to assist in the selection.

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

subdivision shall include the quality of the proposed design, the construction approach to be used to complete the project, the extent to which a proposal demonstrates compliance with the project statement described under subd. 1., the amount of participation of disadvantaged businesses, the proposed management plan for the project, and the contract price for the project.

(h) 1. If the public work is the construction of underground facilities, the district shall prepare a geotechnical report that shall be issued along with a request for a statement of qualifications and a conceptual project approach proposal as described under par. (g) 1. A design–build team may use the geotechnical report in the preparation of its statement of qualifications and conceptual project approach proposal. If a design–build team believes that additional geotechnical studies or tests are needed to prepare its bid, it may arrange for such studies or tests at its own expense.

2. A contract for a public work described under subd. 1. shall contain a differing site conditions clause, which may include compliance dates and requirements. The clause shall be either in substantial conformity with the Federal Acquisition Regulations on Differing Site Conditions under 48 CFR 52.236–2, or with the provisions of subds. 3. to 5.

3. If the contractor discovers any of the following, the contractor shall promptly notify the district in writing before such conditions are disturbed:

a. Subsurface or latent physical conditions at the site that differ materially from those indicated in the contract.

b. Unknown physical conditions at the site, of an unusual nature, which differ materially from those that are ordinarily encountered and generally recognized as inherent in the work to which the contract applies.

1 4. If the district receives written notification under subd. 3., it shall promptly
2 investigate the conditions. If the district agrees with the contractor that the
3 conditions differ materially in one or more of the ways described under subd. 3. and
4 the district determines that the differences will cause an increase or decrease in the
5 contractor's costs or the time required to perform any part of the work under the
6 contract, the district shall make an equitable adjustment and modify the contract in
7 writing.

8 5. No claim for a differing site condition may be allowed if the contractor does
9 not comply with the written notice requirement under subd. 3.

10 (i) If the commission selects a design–build team under par. (g) 3. and enters
11 into a contract for the construction of the project, the design–build team shall obtain
12 bonding, in an amount specified by the commission for the construction–related
13 portions of the contract that is consistent with ss. 779.14 to 779.17, to guarantee
14 completion of the project according to the terms of the contract.

15 (j) All drawings, specifications, and other information submitted in a statement
16 of qualifications and a conceptual project approach proposal remain the property of
17 the design–build team that submitted the proposal, and may not be disclosed by the
18 commission to any person, except that this provision does not apply to the
19 design–build team that is selected under par. (g) 3. once the team and the commission
20 enter into a contract for the construction of the project.

21 (k) 1. Not more than 5 contracts for public construction under sub. (1) may be
22 let using the design–build construction process.

23 2. The estimated cost of each of the contracts described under subd. 1. shall
24 exceed $4,000,000.

3. The total cost for all of the contracts described under subd. 1., combined, may not exceed $60,000,000.

SECTION 5. 281.01 (3e) of the statutes is created to read:

281.01 **(3e)** "Design–build construction process" has the meaning given in s. 200.47 (2) (f) 1.

SECTION 6. 281.41 (1) (a) of the statutes is amended to read:

281.41 **(1)** (a) Except as provided under sub. (2), every owner, within the time prescribed by the department, shall file with the department a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the department, and, if required, of existing systems or plants, and any other information concerning maintenance, operation, and other details that the department requires, including the information specified under s. 281.35 (5) (a), if applicable. Owners contracting for a system, plant, or extension under the design–build construction process shall submit to the department performance objectives and preliminary designs in a form that is satisfactory to the department, rather than complete plans. Material changes with a statement of the reasons shall be likewise submitted. Before plans are drawn, a statement concerning the improvement may be made to the department and the department may, if requested, outline generally what it will require. Upon receipt of the plans for approval, the department or its authorized representative shall notify the owner of the date of receipt.

(END)

Barman, Mike

From: Bruhn, Mike
Sent: Tuesday, February 03, 2004 12:01 PM
To: LRB.Legal
Subject: Draft review: LRB 03-4177/1 Topic: Design-build construction process for the Milwaukee Metropolitan Sewerage District (MMSD)

It has been requested by <Bruhn, Mike> that the following draft be jacketed for the ASSEMBLY:

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