

2003 DRAFTING REQUEST

Bill

Received: 08/20/2003

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Alberta Darling (608) 266-5830

By/Representing: Tom

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: Munis - sewerage districts

Extra Copies:

Submit via email: YES

Requester's email: Sen.Darling@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Authorize the use of the design-build construction process for the Milwaukee Metropolitan Sewerage District

Instructions:

Same as 2003 LRB -1861/4, but limit the number of design build contracts to five, of \$4,000,000 each. Change "Any" to "5" on p. 7, line 12, and add "each" after "\$4,000,000."

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 08/20/2003	csicilia 08/20/2003		_____			Local
/1			pgreensl 08/20/2003	_____	lemery 08/20/2003	lemery 09/19/2003	Local

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	mshovers 12/02/2003	jdyer 12/03/2003 jdyer 12/03/2003	pgreensl 12/03/2003	_____	Inorthro 12/03/2003	Inorthro 12/03/2003	

FE Sent For: *at intro*

<END>

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12/306 P819K

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **08/20/2003**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Alberta Darling (608) 266-5830**

By/Representing: **Tom**

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

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Munis - sewerage districts**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Darling@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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Same as 2003 LRB -1861/4, but limit the number of design build contracts to five, of \$4,000,000 each. Change "Any" to "5" on p. 7, line 12, and add "each" after "\$4,000,000."

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/?	mshovers 08/20/2003	csicilia 08/20/2003		_____			Local
/1			pgreensl 08/20/2003	_____	lemery 08/20/2003		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 08/20/2003

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Alberta Darling (608) 266-5830

By/Representing: Tom

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: Munis - sewerage districts

Extra Copies:

Submit via email: YES

Requester's email: Sen.Darling@legis.state.wi.us

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Pre Topic:

No specific pre topic given

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Drafting History:

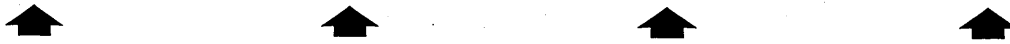
<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	mshovers	1 ijs 8/20/03	8/20/03	8/20/03			
11 MES 8/20/03							
FE Sent For:							

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RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman (or Lynn E. in his absence)

(Request Made By: MES) (Date: 08 / 20 / 03)



Please transfer the drafting file for

2001 LRB to the drafting file

for 2003 LRB

The final version of the 2001 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2001 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2001 draft was incorporated into a 2003 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the 2003 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

— OR —

Please copy the drafting file for

2003 LRB - 1861 / 1 / 4 and place it in the drafting file

for 2003 LRB - 3144 / 1

For research purposes, because the original 2003 draft was incorporated into another 2003 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the new 2003 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then be returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

-3144/1

fmr

&cs

2003 SENATE BILL

Wanted:
Thurs. 9AM
8/21
IN 8/20

SA ✓

Wes

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

not more than five

Analysis by the Legislative Reference Bureau

This bill authorizes the Milwaukee Metropolitan Sewerage District (MMSD) to let a contract 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 bill, the design-build construction process may be used only for projects the estimated cost of which exceeds \$4,000,000. ~~for each of the five allowable projects~~

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 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 sewers or tunnels, MMSD must also prepare a

contracts

SENATE BILL

geotechnical report, which must be issued as part of the first stage of the selection process.

Following receipt of the bids, MMSD must select at least three but not more than five design-build teams to participate in the second stage of the selection process, unless MMSD receives fewer than three statements of qualification and initial project approach proposals. 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 initial project approach proposal.

In the second stage of the selection process, MMSD must choose from among the five or fewer 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, the estimated cost of the project, and a guaranteed maximum price for the project. If MMSD enters into a contract with one of the teams, that design-build team must obtain bonding to guarantee completion of the project.

If the public work involves the construction of underground sewers or tunnels, 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.

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:

- 1 **SECTION 1.** 200.47 (2) (a) of the statutes is amended to read:
- 2 200.47 (2) (a) Except for a contract awarded under pars. (f) to (k) and except
- 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

SENATE BILL

1 complying with the invitation to bid, if the work or purchase involves an expenditure
2 of \$20,000 or more. If the commission decides to proceed with construction of any
3 sewer after plans and specifications for the sewer are completed and approved by the
4 commission and by the department of natural resources under ch. 281, the
5 commission shall advertise by a class 2 notice under ch. 985 for construction bids.
6 All contracts and the awarding of contracts are subject to s. 66.0901, except for a
7 contract awarded under pars. (f) to (k).

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

9 200.47 (2) (bm) The design–build team selected by the commission under par.
10 (g) 3. shall advertise the work to be performed, other than work that is to be
11 performed by the design–build team itself, which involves an expenditure of \$20,000
12 or more, as a class 2 notice under ch. 985. Publicly, the design–build team shall open
13 the bids, review the bids, and award the contract to the lowest responsible bidder.
14 The commission shall at all times have access to the bids.

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

16 200.47 (2) (e) Paragraphs (a) to (d) do not apply to contracts awarded under s.
17 200.49. Paragraphs (f) to (k) do apply to contracts awarded under s. 200.49.

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

19 200.47 (2) (f) In this subsection:

20 1. “Design–build construction process” means a project delivery and
21 procurement process for the design, construction, repair, renovation, installation, or
22 demolition of a public works project under which a single entity is responsible for the
23 professional design services and construction services related to the project.

24 2. “Disadvantaged business” means a business that meets the eligibility
25 criteria under s. 84.076 (1) (b) or is a small business with a gross income in the 12

SENATE BILL**SECTION 4**

1 months preceding the submission of a statement of qualifications as described in par.
2 (g) 1. of not more than \$2,500,000.

3 3. “Professional design services” means design services provided by an entity
4 that includes at least one architect, as defined in s. 443.01 (1), and at least one
5 professional engineer, as defined in s. 443.01 (7).

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

9 1. The commission shall issue a request for a statement of qualifications and
10 an initial project approach proposal from design–build teams by publishing a class
11 1 notice under ch. 985. The notice shall include a project statement that describes
12 the project requirements and project design goals; detailed submission
13 requirements; selection procedures; selection criteria, including consideration of
14 disadvantaged businesses; site information; an outline of specifications for the
15 project; a budget for the project; a project schedule; the composition of the selection
16 panel; the approximate amount of the bond, consistent with ss. 779.14 to 779.17, that
17 the commission will require under par. (i); and whether the commission will offer a
18 stipend to unsuccessful design–build teams and, if so, the amount of the stipend.

19 2. Following receipt of the statement of qualifications and the initial project
20 approach proposal, the commission shall select 3 to 5 design–build teams to
21 participate in the final stage of the selection process, except that the requirement to
22 select 3 to 5 teams does not apply if the commission receives fewer than 3 statements
23 of qualification and initial project approach proposals. The selection of teams under
24 this subdivision shall be based on factors that include the background, experience,
25 and qualifications of the members of the teams; the amount of participation of

SENATE BILL

1 disadvantaged businesses; the financial and surety capacity of the teams; the
2 statement of qualifications and the initial project approach proposal; and the past
3 performance and current workload of the teams. The commission selection panel
4 that selects the teams under this subdivision for the final selection process under
5 subd. 3. may include design and construction professionals who work for the
6 commission or are hired by the commission to assist in the selection, commissioners,
7 and representatives from the unit of the commission that will use the facility that is
8 to be constructed under the selection process described in this paragraph.

9 3. The commission shall make a final selection from among the teams selected
10 under subd. 2. if the commission determines that at least one of the teams selected
11 as a finalist under subd. 2. will be able to construct the public work in a way that is
12 satisfactory to the commission. The final selection shall be made following
13 interviews and presentations from the finalists, based on criteria that are published
14 as a class 1 notice under ch. 985. The notice shall state the weight that is given to
15 each criterion. The criteria to be used in making a final selection under this
16 subdivision shall include the quality of the proposed design, the construction
17 approach to be used to complete the project, the extent to which a proposal
18 demonstrates compliance with the project statement described under subd. 1., the
19 amount of participation of disadvantaged businesses, the proposed management
20 plan for the project, the estimated cost of the project, and a guaranteed maximum
21 price for the project.

22 (h) 1. If the public work is the construction of underground sewers or tunnels,
23 the district shall prepare a geotechnical report that shall be issued along with a
24 request for a statement of qualifications and an initial project approach proposal as
25 described under par. (g) 1. A design-build team may use the geotechnical report in

SENATE BILL**SECTION 4**

1 the preparation of its statement of qualifications and initial project approach
2 proposal. If a design-build team believes that additional geotechnical studies or
3 tests are needed to prepare its bid, it may arrange for such studies or tests at its own
4 expense.

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

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

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

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

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

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

SENATE BILL

1 (i) If the commission selects a design-build team under par. (g) 3. and enters
2 into a contract for the construction of the project, the design-build team shall obtain
3 bonding, in an amount specified by the commission that is consistent with ss. 779.14
4 to 779.17, to guarantee completion of the project according to the terms of the
5 contract.

6 (j) All drawings, specifications, and other information submitted in a statement
7 of qualifications and an initial project approach proposal remain the property of the
8 design-build team that submitted the proposal, and may not be disclosed by the
9 commission to any person, except that this provision does not apply to the
10 design-build team that is selected under par. (g) 3. once the team and the commission
11 enter into a contract for the construction of the project.

12 (k) ^{1. Not more than 5} Any contract for public construction under sub. (1) ^{2.} the estimated cost of each of
13 which exceeds \$4,000,000, may be let using the design-build construction process. ^{the contracts described under}
^{sub. 1. must exceed \$4,000,000.}
^{shall}

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

15 281.01 (3e) "Design-build construction process" has the meaning given in s.
16 200.47 (2) (f) 1.

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

18 281.41 (1) (a) 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 any other information concerning maintenance, operation, and other details that 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

SENATE BILL**SECTION 6**

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 the plans for approval, the
6 department or its authorized representative shall notify the owner of the date of
7 receipt.

8

(END)

Emery, Lynn

From: Emery, Lynn
Sent: Friday, September 19, 2003 3:36 PM
To: Sen.Darling
Subject: LRB-3144/1 (attached as requested)



03-3144/1

Lynn Emery
Program Assistant
Legislative Reference Bureau
608-266-3561
lynn.emery@legis.state.wi.us

Shovers, Marc

From: Petri, Tom
Sent: Tuesday, December 02, 2003 10:19 AM
To: Shovers, Marc
Subject: LRB-3144/1



LRB 3144.doc

I should've just emailed it to you last month. Damn!

My suggested corrections are included in the word doc (which was cut and pasted out of the original pdf). It wasn't a rush request before, but now it needs to be, unfortunately.

Thanks.

Tom-

2003 BILL

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 bill 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 bill, the design-build construction process may be used only for contracts, the estimated cost of which exceeds \$4,000,000.

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 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 sewers or tunnels, 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 at least three but not more than five design-build teams to participate in the second stage of the selection process, unless MMSD receives fewer than three statements of qualification and initial project approach proposals. 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 initial project approach proposal.

In the second stage of the selection process, MMSD must choose from among the five or fewer 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, the estimated cost of the project, and a guaranteed maximum price for the project. If MMSD enters into a contract with one of the teams, that design-build team must obtain bonding to guarantee completion of the project.

If the public work involves the construction of underground sewers or tunnels, 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.

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:

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

200.47 (2) (a) Except for a contract awarded under pars. (f) to (k) and except as provided in par. (b), all work done and all purchases of supplies and materials by the commission shall be by contract awarded to the lowest responsible bidder 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 work that is to be performed by the design-build team itself or design services contracted for by the design-build team, 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.

*Cooplude 2
is goal to
remove
design services
from Ks the
team must bid
out*

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. "Design-build construction process" means 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.

2. "Design-build team" means a single party entity which is responsible for all planning, design and construction services related to the project. It does not include subconsultants or subcontractors not part of the legal entity contracting with the commission under 200.47 (2) (k).

*Why
define?
must change some
"d-b-teams" to
"prospective d-b teams"*

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

24.. "Professional design services" means design services provided by an entity that includes at least one architect, as defined in s. 443.01 (1), and at least one professional engineer and other licensed professionals as specifically required by the commission, as defined in s. 443.01 (7).

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

1. The commission shall issue a request for a statement of qualifications and an initial project approach proposal from design-build teams by publishing a class 1 notice under ch. 985. The notice shall include a project statement that describes the project requirements, performance criteria and project design goals; detailed submission requirements; selection procedures; selection criteria, including consideration of disadvantaged businesses; site information; an outline of specifications for the project; a budget for the project; a project schedule; the composition of the selection panel; the approximate amount of the bond, consistent 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 design-build teams and, if so, the amount of the stipend.

2. Following receipt of the statement of qualifications and the initial project approach proposal, the commission shall select no more than 3 to 5 design-build teams to

participate in the final stage of the selection process, ~~except that the requirement to select 3 to 5 teams does not apply if the commission receives fewer than 3 statements of qualification and initial project approach proposals.~~ 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 initial project approach proposal; and the past performance and available resources ~~current workload~~ of the teams. The commission selection panel that selects the teams under this subdivision for the final selection process under subd. 3. may include design and construction professionals who work for the commission or are hired by the commission to assist in the selection, commissioners, and shall include a registered professional engineer who is ~~is~~ a faculty member at a Wisconsin university or college that has been accredited by the Accreditation Board for Engineering and Technology and the city or village engineer, or his or her designee, where the majority of the public work is to be located. ~~representatives from the unit of the commission that will use the facility that is to be constructed under the selection process described in this paragraph.~~

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, ~~the estimated cost of the project, and contract price. a~~ guaranteed maximum price for the project.

(h) 1. If the public work is the construction of underground facilities, sewers or ~~tunnels,~~ the district shall prepare a geotechnical report that shall be issued along with a request for a statement of qualifications and an initial 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 initial 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.

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

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

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

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

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

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

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 ~~may~~ 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)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3144/1
MES:cmh&jld&cs:pg

RMA

2003 BILL

TODAY
WANTED
Wed. 12/3

Rogers

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

Analysis by the Legislative Reference Bureau

This bill 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 bill, the design-build construction process may be used only for contracts, the estimated cost of which exceeds \$4,000,000.

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, 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 sewers or tunnels, MMSD must also prepare a

Performance criteria

facilities ✓

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geotechnical report, which must be issued as part of the first stage of the selection process.

Following receipt of the bids, MMSD must select ^{prospective} ~~at least three~~ ^{no more than} ~~but not more than five~~ design-build teams to participate in the second stage of the selection process, ~~unless MMSD receives fewer than three statements of qualification and initial project approach proposals.~~ 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 initial project approach proposal.

In the second stage of the selection process, MMSD must choose from among the ~~five or fewer~~ 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, ~~the estimated cost of the project, and a guaranteed maximum price for the project.~~ If MMSD enters into a contract with one of the teams, that design-build team must obtain bonding to guarantee completion of the project.

If the public work involves the construction of underground ~~sewers or tunnels~~ ^{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.

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:

- 1 **SECTION 1.** 200.47 (2) (a) [✓] of the statutes is amended to read:
- 2 200.47 (2) (a) Except for a contract awarded under pars. (f) to (k) and except [✓]
- 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

for the construction related portions of the contract

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1 complying with the invitation to bid, if the work or purchase involves an expenditure
2 of \$20,000 or more. If the commission decides to proceed with construction of any
3 sewer after plans and specifications for the sewer are completed and approved by the
4 commission and by the department of natural resources under ch. 281, the
5 commission shall advertise by a class 2 notice under ch. 985 for construction bids.
6 All contracts and the awarding of contracts are subject to s. 66.0901, except for a
7 contract awarded under pars. (f) to (k).

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

9 200.47 (2) (bm) The design-build team selected by the commission under par.
10 (g) 3. shall advertise the work to be performed, other than ^{design services or} work that is to be
11 performed by the design-build team itself, which involves an expenditure of \$20,000
12 or more, as a class 2 notice under ch. 985. Publicly, the design-build team shall open
13 the bids, review the bids, and award the contract to the lowest responsible bidder.
14 The commission shall at all times have access to the bids.

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

16 200.47 (2) (e) Paragraphs (a) to (d) do not apply to contracts awarded under s.
17 200.49. Paragraphs (f) to (k) do apply to contracts awarded under s. 200.49.

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

19 200.47 (2) (f) In this subsection:

20 1. "Design-build construction process" means a project delivery and
21 procurement process for the design, construction, repair, renovation, installation, or
22 demolition of a public works project under which a single entity is responsible for the
23 professional design services and construction services related to the project.

24 3. "Disadvantaged business" means a business that meets the eligibility
25 criteria under s. 84.076 (1) (b) or is a small business with a gross income in the 12

2. "Design-build team" means a single entity that is responsible
for a project that is undertaken using a design-build construction
process.

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1 months preceding the submission of a statement of qualifications as described in par.
2 (g) 1. of not more than \$2,500,000.

3 4. 3. "Professional design services" means design services provided by an entity
4 that includes at least one architect, as defined in s. 443.01 (1), and at least one
5 professional engineer, as defined in s. 443.01 (7), and any other ~~licensed~~ professionals
6 that are required by the commission

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

10 1. The commission shall issue a request for a statement of qualifications and
11 an initial project approach proposal from ^{prospective} design-build teams by publishing a class
12 1 notice under ch. 985. The notice shall include a project statement that describes
13 the project requirements, ^{performance criteria,} and project design goals; detailed submission
14 requirements; selection procedures; selection criteria, including consideration of
15 disadvantaged businesses; site information; an outline of specifications for the
16 project; a budget for the project; a project schedule; the composition of the selection
17 panel; the approximate amount of the bond, consistent with ss. 779.14 to 779.17, that
18 the commission will require under par. (i); and whether the commission will offer a
19 stipend to ^{prospective} unsuccessful design-build teams and, if so, the amount of the stipend.

20 2. Following receipt of the statement of qualifications and the initial project
21 approach proposal, the commission shall select ^{no more than} 3 ~~to 5~~ ^{prospective} design-build teams to
22 participate in the final stage of the selection process, ~~except that the requirement to~~
23 ~~select 3 to 5 teams does not apply if the commission receives fewer than 3 statements~~
24 ~~of qualification and initial project approach proposals.~~ The selection of teams under
25 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

BILL SECTION 4

disadvantaged businesses; the financial and surety capacity of the teams; the statement of qualifications and the initial project approach proposal; and the past performance and ~~current workload~~ ^{available resources} of the teams. The commission selection panel that selects the teams under this subdivision for the final selection process under subd. 3. ^{Commissioners or} may include design and construction professionals who work for the commission or are hired by the commission to assist in the selection ~~of~~ ^{commissioners} and representatives from the unit of the commission that will use the facility that is to be constructed under the selection process described in this paragraph.

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, the estimated cost of the project, and a guaranteed maximum ^{and the contract} price for the project.

(h) 1. If the public work is the construction of underground ~~sewers or tunnels~~ ^{facilities} the district shall prepare a geotechnical report that shall be issued along with a request for a statement of qualifications and an initial project approach proposal as described under par. (g) 1. A design-build team may use the geotechnical report in

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1 the preparation of its statement of qualifications and initial project approach
2 proposal. If a design-build team believes that additional geotechnical studies or
3 tests are needed to prepare its bid, it may arrange for such studies or tests at its own
4 expense.

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

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

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

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

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

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

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

6 (j) All drawings, specifications, and other information submitted in a statement
7 of qualifications and an initial project approach proposal remain the property of the
8 design–build team that submitted the proposal, and may not be disclosed by the
9 commission to any person, except that this provision does not apply to the
10 design–build team that is selected under par. (g) 3. ✓ once the team and the commission
11 enter into a contract for the construction of the project.

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

14 2. The estimated cost of each of the contracts described under subd. 1. shall
15 exceed \$4,000,000.

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

17 281.01 (3e) “Design–build construction process” has the meaning given in s.
18 200.47 (2) (f) 1.

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

20 281.41 (1) (a) Except as provided under sub. (2), every owner, within the time
21 prescribed by the department, shall file with the department a certified copy of
22 complete plans of a proposed system or plant or extension thereof, in scope and detail
23 satisfactory to the department, and, if required, of existing systems or plants, and
24 any other information concerning maintenance, operation, and other details that the
25 department requires, including the information specified under s. 281.35 (5) (a), if

BILL**SECTION 6**

1 applicable. Owners contracting for a system, plant, or extension under the
2 design-build construction process [✓] ~~may~~ ^{shall} submit to the department performance
3 objectives and preliminary designs in a form that is satisfactory to the department,
4 rather than complete plans. Material changes with a statement of the reasons shall
5 be likewise submitted. Before plans are drawn, a statement concerning the
6 improvement may be made to the department and the department may, if requested,
7 outline generally what it will require. Upon receipt of the plans for approval, the
8 department or its authorized representative shall notify the owner of the date of
9 receipt.

10 (END)