



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 08/20/2003 (Per: MES)



☞ The 2003 drafting file for LRB 03-1861/4

has been copied/added to the 2003 drafting file for

# LRB 03-3144

☞ The attached 2003 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied on yellow paper (darkened - auto centered - reduced to 90%), and added, as a appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

**2003 DRAFTING REQUEST**

**Bill**

Received: 01/30/2003

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Alberta Darling (608) 266-5830

By/Representing: Matt

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: Munis - sewerage districts

Extra Copies: RCT

Submit via email: YES

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

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Allow MMSD (Mil. Metro. Sewerage Dist) to use design-build construction process

---

**Instructions:**

Same as 2001 LRB -2296/2

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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>
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/1			rschluet 02/25/2003	_____	amentkow 02/25/2003		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>
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/3	mshovers 05/21/2003	jdyer 05/21/2003	chaskett 05/21/2003	_____	amentkow 05/21/2003	amentkow 05/21/2003	Local
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14 MES 5/22/03  
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May Contact:

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Subject: Munis - sewerage districts

Extra Copies: RCT

Submit via email: YES

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

Carbon copy (CC:) to:

Please ~~edit~~  
e-mail this to  
Mike McCabe at:  
"mmccabe@mmsd.com"  
THANKS.  
Mann

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By/Representing: **Matt**

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Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Munis - sewerage districts**

Extra Copies: **RCT**

Submit via email: **YES**

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

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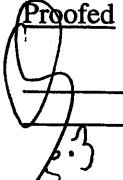
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Instructions:

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2003-2004  
2001-2002 LEGISLATURE

-1861/1  
LRB-2296/2  
MES: ~~1861~~

2003 2001 BILL

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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 (j) 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 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 only be used for projects, the estimated cost of which exceeds \$1,000,000.

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.

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

**BILL**

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.

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 (j) and except as  
3 provided in par. (b), all work done and all purchases of supplies and materials by the  
4 commission shall be by contract awarded to the lowest responsible bidder complying  
5 with the invitation to bid, if the work or purchase involves an expenditure of \$20,000  
6 or more. If the commission decides to proceed with construction of any sewer after  
7 plans and specifications for the sewer are completed and approved by the commission  
8 and by the department of natural resources under ch. 281, the commission shall  
9 advertise by a class 2 notice under ch. 985 for construction bids. All contracts and  
10 the awarding of contracts are subject to s. 66.0901, except for a contract awarded  
11 under pars. (f) to (j).

**BILL**

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

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

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

9           200.47 (2) (e) Paragraphs (a) to (d) do not apply to contracts awarded under s.  
10 200.49. Paragraphs (f) to (j) do apply to contracts awarded under s. 200.49.

*read* }

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

12           200.47 (2) (f) In this subsection:

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

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

21           3. "Professional design services" means design services provided by an entity  
22 that includes at least one architect, as defined in s. 443.01 (1) and at least one  
23 professional engineer, as defined in s. 443.01 (7).

**BILL**

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

4 1. The commission shall issue a request for a statement of qualifications and  
5 an initial project approach proposal from design-build teams by publishing a class  
6 1 notice under ch. 985. The notice shall include a project statement that describes  
7 the project requirements and project design goals; detailed submission  
8 requirements; selection procedures; selection criteria, including consideration of  
9 disadvantaged businesses; site information; an outline of specifications for the  
10 project; a budget for the project; a project schedule; the composition of the selection  
11 panel; the approximate amount of the bond, consistent with ss. 779.14 to 779.17, that  
12 the commission will require under par. (h); and whether the commission will offer a  
13 stipend to unsuccessful design-build teams and, if so, the amount of the stipend.

14 2. Following receipt of the statement of qualifications and the initial project  
15 approach proposal, the commission shall select 3 to 5 design-build teams to  
16 participate in the final stage of the selection process, except that the requirement to  
17 select 3 to 5 teams does not apply if the commission receives fewer than 3 statements  
18 of qualification and initial project approach proposals. The selection of teams under  
19 this subdivision shall be based on factors that include the background, experience,  
20 and qualifications of the members of the teams; the amount of participation of  
21 disadvantaged businesses; the financial and surety capacity of the teams; the  
22 statement of qualifications and the initial project approach proposal; and the past  
23 performance and current workload of the teams. The commission selection panel  
24 that selects the teams under this subdivision for the final selection process under  
25 subd. 3. may include design and construction professionals who work for the



**BILL**

1 commission or are hired by the commission to assist in the selection, commissioners,  
2 and representatives from the unit of the commission that will use the facility that is  
3 to be constructed under the selection process described in this paragraph.

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

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

22 (i) All drawings, specifications, and other information submitted in a statement  
23 of qualifications and an initial project approach proposal remain the property of the  
24 design-build team that submitted the proposal, and may not be disclosed by the  
25 commission to any person, except that this provision does not apply to the

**BILL**

1 design-build team that is selected under par. (g) 3. once the team and the commission  
2 enter into a contract for the construction of the project.

3 (j) Any contract for public construction under sub. (1), the estimated cost of  
4 which exceeds \$1,000,000, may be let using the design-build construction process.

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

6 281.01 (3e) "Design-build construction process" has the meaning given in s.  
7 200.47 (2) (f) 1.

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

9 281.41 (1) (a) Except as provided under sub. (2), every owner, within the time  
10 prescribed by the department, shall file with the department a certified copy of  
11 complete plans of a proposed system or plant or extension thereof, in scope and detail  
12 satisfactory to the department, and, if required, of existing systems or plants, and  
13 any other information concerning maintenance, operation, and other details that the  
14 department requires, including the information specified under s. 281.35 (5) (a), if  
15 applicable. Owners contracting for a system, plant, or extension under the  
16 design-build construction process may submit to the department performance  
17 objectives and preliminary designs in a form that is satisfactory to the department,  
18 rather than complete plans. Material changes with a statement of the reasons shall  
19 be likewise submitted. Before plans are drawn, a statement concerning the  
20 improvement may be made to the department and the department may, if requested,  
21 outline generally what it will require. Upon receipt of the plans for approval, the  
22 department or its authorized representative shall notify the owner of the date of  
23 receipt.

24

(END)



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1861/2

MES:cmh:rs

FMR

2003 BILL

SOON

Ed, LPS  
ONLY changes:  
ANL & P. 6, 14

Regen

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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.

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

**BILL**

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

2           200.47 (2) (bm) The design-build team selected by the commission under par.  
3 (g) 3. shall advertise the work to be performed, other than work that is to be  
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20 (g) 1. of not more than \$2,500,000.

21           3. "Professional design services" means design services provided by an entity  
22 that includes at least one architect, as defined in s. 443.01 (1), and at least one  
23 professional engineer, as defined in s. 443.01 (7).

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10 project; a budget for the project; a project schedule; the composition of the selection  
11 panel; the approximate amount of the bond, consistent with ss. 779.14 to 779.17, that  
12 the commission will require under par. (h); and whether the commission will offer a  
13 stipend to unsuccessful design-build teams and, if so, the amount of the stipend.

14 2. Following receipt of the statement of qualifications and the initial project  
15 approach proposal, the commission shall select 3 to 5 design-build teams to  
16 participate in the final stage of the selection process, except that the requirement to  
17 select 3 to 5 teams does not apply if the commission receives fewer than 3 statements  
18 of qualification and initial project approach proposals. The selection of teams under  
19 this subdivision shall be based on factors that include the background, experience,  
20 and qualifications of the members of the teams; the amount of participation of  
21 disadvantaged businesses; the financial and surety capacity of the teams; the  
22 statement of qualifications and the initial project approach proposal; and the past  
23 performance and current workload of the teams. The commission selection panel  
24 that selects the teams under this subdivision for the final selection process under  
25 subd. 3. may include design and construction professionals who work for the

**BILL**

1 commission or are hired by the commission to assist in the selection, commissioners,  
2 and representatives from the unit of the commission that will use the facility that is  
3 to be constructed under the selection process described in this paragraph.

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

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

22 (i) All drawings, specifications, and other information submitted in a statement  
23 of qualifications and an initial project approach proposal remain the property of the  
24 design-build team that submitted the proposal, and may not be disclosed by the  
25 commission to any person, except that this provision does not apply to the

**BILL**

1 design-build team that is selected under par. (g) 3. once the team and the commission  
2 enter into a contract for the construction of the project.

3 (j) Any contract for public construction under sub. (1), the estimated cost of  
4 which exceeds \$<sup>4</sup>1,000,000, may be let using the design-build construction process.

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

6 281.01 (3e) "Design-build construction process" has the meaning given in s.  
7 200.47 (2) (f) 1.

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

9 281.41 (1) (a) Except as provided under sub. (2), every owner, within the time  
10 prescribed by the department, shall file with the department a certified copy of  
11 complete plans of a proposed system or plant or extension thereof, in scope and detail  
12 satisfactory to the department, and, if required, of existing systems or plants, and  
13 any other information concerning maintenance, operation, and other details that the  
14 department requires, including the information specified under s. 281.35 (5) (a), if  
15 applicable. Owners contracting for a system, plant, or extension under the  
16 design-build construction process may submit to the department performance  
17 objectives and preliminary designs in a form that is satisfactory to the department,  
18 rather than complete plans. Material changes with a statement of the reasons shall  
19 be likewise submitted. Before plans are drawn, a statement concerning the  
20 improvement may be made to the department and the department may, if requested,  
21 outline generally what it will require. Upon receipt of the plans for approval, the  
22 department or its authorized representative shall notify the owner of the date of  
23 receipt.

24

(END)



**Mentkowski, Annie**

---

**From:** Petri, Tom  
**Sent:** Tuesday, April 01, 2003 10:34 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-1861/2 Topic: Allow MMSD (Mil. Metro. Sewerage Dist) to use design-build construction process

It has been requested by <Petri, Tom> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-1861/2 Topic: Allow MMSD (Mil. Metro. Sewerage Dist) to use design-build construction process

Mike McCabe  
44-520-5909

Marc -

Please add this to the slash/3 version of LRB 1861

1 66.904(2)(am)2. CONTRACTUAL PROVISIONS FOR UNDERGROUND WORK  
2 a. With regard to any contract for construction of sewers or tunnels that is to be let  
3 pursuant to para. 1, the district shall prepare a geotechnical report which will be provided  
4 together with the district's request for a statement of qualifications and initial project  
5 approach. Any design-builder may use the geotechnical report to prepare its statement of  
6 qualifications and initial project approach and to perform the work required in the event  
7 the design-builder is awarded the contract. Nothing in this paragraph precludes a design-  
8 builder from arranging for additional geotechnical studies or tests as it may deem  
9 necessary at its expense.

10  
11 b. The district shall include a differing site conditions clause in any contract for design-  
12 build of a sewer or tunnel. The clause shall be in substantial conformance with either the  
13 current provisions of the Federal Acquisitions Regulation on differing site conditions or  
14 with the following provisions, and the district may modify the clause to include  
15 compliance dates and requirements:

16  
17 (i) The contractor shall promptly, and before such conditions are disturbed,  
18 notify the district by written notice of subsurface or latent physical  
19 conditions at the site differing materially from those indicated in the  
20 contract; or unknown physical conditions at the site, of an unusual nature,  
21 differing materially from those ordinarily encountered and generally  
22 recognized as inherent in the work of the character provided for in the  
23 contract.

24  
25 (ii) The district shall promptly investigate the conditions. If the district finds  
26 that conditions materially differ and will cause an increase or decrease in  
27 the contractor's cost or the time required to perform any part of the work  
28 under the contract, whether or not changed as a result of such conditions,  
29 the district shall, after receipt of the contractor's written statement, make an  
30 equitable adjustment and modify the contract in writing.

31  
32 (iii) No claim for a differing site condition shall be allowed unless the contractor  
33 has given the notice required in (i), above. The district may extend the time  
34 prescribed to provide the required notice.  
35  
36

applies to FAR and

to noneed investigate claims under Fed. Acq. Act 2

No claim under Fed. Acq. Act 2

mmccabe@mmsd.com

Midwestern Legislative Conference  
Annual Meeting

Milwaukee, Wisconsin  
August 24-27, 2003

MARC

I'm assuming this language will need to be created. let me know if you have questions. Thanks!

Midwest  
www.csamidwest.org

Tom



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1861/2  
MES:cmh&jld:pg

3  
RMR

2003 BILL

D-Note

Wanted today  
5/21

wo# If the public work is for the construction of underground sewers or tunnels, MMSD must also prepare a geotechnical report, which <sup>must</sup> be issued as part of the first stage of the selection process.

Regen

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 (j) 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 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.

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.

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

**BILL**

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.

INS  
ANL ✓

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 (g) and except as
- 3           provided in par. (b), all work done and all purchases of supplies and materials by the
- 4           commission shall be by contract awarded to the lowest responsible bidder complying
- 5           with the invitation to bid, if the work or purchase involves an expenditure of \$20,000
- 6           or more. If the commission decides to proceed with construction of any sewer after
- 7           plans and specifications for the sewer are completed and approved by the commission
- 8           and by the department of natural resources under ch. 281, the commission shall
- 9           advertise by a class 2 notice under ch. 985 for construction bids. All contracts and
- 10          the awarding of contracts are subject to s. 66.0901, except for a contract awarded
- 11          under pars. (f) to (g).

Handwritten scribbles and signatures at the bottom left of the page.

**BILL**

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

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

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

9           200.47 (2) (e) Paragraphs (a) to (d) do not apply to contracts awarded under s.  
10 200.49. Paragraphs (f) to (g) do apply to contracts awarded under s. 200.49.

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

12           200.47 (2) (f) In this subsection:

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

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

21           3. "Professional design services" means design services provided by an entity  
22 that includes at least one architect, as defined in s. 443.01 (1), and at least one  
23 professional engineer, as defined in s. 443.01 (7).

## BILL

1 (g) If the commission wishes to construct a public work under par. (d) using the  
2 design-build construction process, the commission shall <sup>comma</sup> use a selection process that <sup>subject to par. Ch</sup> contains the following procedures: ✓

3  
4 1. The commission shall issue a request for a statement of qualifications and  
5 an initial project approach proposal from design-build teams by publishing a class  
6 1 notice under ch. 985. The notice shall include a project statement that describes  
7 the project requirements and project design goals; detailed submission  
8 requirements; selection procedures; selection criteria, including consideration of  
9 disadvantaged businesses; site information; an outline of specifications for the  
10 project; a budget for the project; a project schedule; the composition of the selection  
11 panel; the approximate amount of the bond, consistent with ss. 779.14 to 779.17, that  
12 the commission will require under par. (b); <sup>letter</sup> and whether the commission will offer a  
13 stipend to unsuccessful design-build teams and, if so, the amount of the stipend.

14 2. Following receipt of the statement of qualifications and the initial project  
15 approach proposal, the commission shall select 3 to 5 design-build teams to  
16 participate in the final stage of the selection process, except that the requirement to  
17 select 3 to 5 teams does not apply if the commission receives fewer than 3 statements  
18 of qualification and initial project approach proposals. The selection of teams under  
19 this subdivision shall be based on factors that include the background, experience,  
20 and qualifications of the members of the teams; the amount of participation of  
21 disadvantaged businesses; the financial and surety capacity of the teams; the  
22 statement of qualifications and the initial project approach proposal; and the past  
23 performance and current workload of the teams. The commission selection panel  
24 that selects the teams under this subdivision for the final selection process under  
25 subd. 3. may include design and construction professionals who work for the

**BILL**

1 commission or are hired by the commission to assist in the selection, commissioners,  
2 and representatives from the unit of the commission that will use the facility that is  
3 to be constructed under the selection process described in this paragraph.

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

INS  
5-16

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

22 (i) All drawings, specifications, and other information submitted in a statement  
23 of qualifications and an initial project approach proposal remain the property of the  
24 design-build team that submitted the proposal, and may not be disclosed by the  
25 commission to any person, except that this provision does not apply to the

**BILL**

1 design-build team that is selected under par. (g) 3. once the team and the commission  
2 enter into a contract for the construction of the project.

3 Any contract for public construction under sub. (1), the estimated cost of  
4 which exceeds \$4,000,000, may be let using the design-build construction process.

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

6 281.01 (3e) "Design-build construction process" has the meaning given in s.  
7 200.47 (2) (f) 1.

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

9 281.41 (1) (a) Except as provided under sub. (2), every owner, within the time  
10 prescribed by the department, shall file with the department a certified copy of  
11 complete plans of a proposed system or plant or extension thereof, in scope and detail  
12 satisfactory to the department, and, if required, of existing systems or plants, and  
13 any other information concerning maintenance, operation, and other details that the  
14 department requires, including the information specified under s. 281.35 (5) (a), if  
15 applicable. Owners contracting for a system, plant, or extension under the  
16 design-build construction process may submit to the department performance  
17 objectives and preliminary designs in a form that is satisfactory to the department,  
18 rather than complete plans. Material changes with a statement of the reasons shall  
19 be likewise submitted. Before plans are drawn, a statement concerning the  
20 improvement may be made to the department and the department may, if requested,  
21 outline generally what it will require. Upon receipt of the plans for approval, the  
22 department or its authorized representative shall notify the owner of the date of  
23 receipt.

24

(END)

d-note  
↓



2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1861/3ins  
MES:cmh&jld:pg

INS ANL

If the public work involves the construction of underground sewers or tunnels, the contract must have a differing site conditions clause. If the ~~the~~ contractor discovers any of a number of physical conditions at the site ~~which differ~~ <sup>that</sup> 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 ~~the district~~ <sup>MMSD</sup> agrees with the contractor's assessment of the conditions and ~~the district~~ <sup>it</sup> determines that the differing site conditions will increase or decrease the contractor's costs or time spent to perform the work under the contract, ~~the district~~ <sup>it</sup> must make an equitable adjustment to the contract.

Ins. 5-16

(h) 1. If the public work is the construction of underground sewers or tunnels, ~~the district~~ <sup>✓</sup> shall prepare a geotechnical report ~~which~~ <sup>that</sup> shall be issued along with a request for a statement of qualifications and an initial project approach proposal <sup>✓</sup> as described under par. (g) 1. <sup>✓</sup> A design-build team <sup>✓</sup> 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 need<sup>ed</sup> <sup>✓</sup> 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. <sup>✓</sup> shall contain a differing site conditions clause. The clause shall be either in substantial conformity with the Federal Acquisition Regulations on Differing Site Conditions under 48 CFR 52.236-2, or the provisions of subds. 3. to 5. <sup>✓</sup> shall apply. If the clause is in substantial conformity with 48 CFR 52.236-2, the district may modify the clause to include compliance dates and requirements. <sup>check Δ</sup>

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



INS 5-16  
CONT

that

Ⓢ a. Subsurface or latent physical conditions at the site which 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. The district may extend the time allowed in the contract for a contractor to provide the written notice that is required under subd. 3.

(end ins)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1861/3dn  
MES:cmh&jld:pg

KEEP

Senator Darling:

\* This version of the bill is based on the materials that you sent me concerning contractual provisions for underground work. Because the suggested language was sometimes difficult to follow, I made a number of modifications to, and reorganized, the suggested language. I discussed a number of these changes with Mike McCabe of MMSD. Please review this version of the bill very carefully to ensure that the changes I made are consistent with your intent, or let me know if you'd like the bill redrafted.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1861/3dn  
MES:cmh&jld:cph

May 21, 2003

Senator Darling:

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Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: [marc.shovers@legis.state.wi.us](mailto:marc.shovers@legis.state.wi.us)



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1861/4  
MES:cmh&jld:cph

AMP

2003 SENATE BILL

SOON  
IN  
5/22

Regen

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 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.

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

**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**

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

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. <sup>which may</sup> The clause shall be either in substantial conformity with the  
7 Federal Acquisition Regulations on Differing Site Conditions under 48 CFR  
8 52.236-2, <sup>with</sup> or the provisions of subds. 3. to 5. ~~shall apply~~. <sup>If the clause is in substantial</sup>  
9 ~~conformity with 48 CFR 52.236-2, the district may modify the clause to include~~  
10 compliance dates and requirements

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

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

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

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

**SENATE BILL**

1           5. No claim for a differing site condition may be allowed if the contractor does  
2 not comply with the written notice requirement under subd. 3. ~~The district may~~  
3 ~~extend the time allowed in the contract for a contractor to provide the written notice~~  
4 ~~that is required under subd. 3.~~

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

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

16           (k) Any contract for public construction under sub. (1), the estimated cost of  
17 which exceeds \$4,000,000, may be let using the design-build construction process.

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

19           281.01 (3e) "Design-build construction process" has the meaning given in s.  
20 200.47 (2) (f) 1.

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

22           281.41 (1) (a) Except as provided under sub. (2), every owner, within the time  
23 prescribed by the department, shall file with the department a certified copy of  
24 complete plans of a proposed system or plant or extension thereof, in scope and detail  
25 satisfactory to the department, and, if required, of existing systems or plants, and

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1 any other information concerning maintenance, operation, and other details that the  
2 department requires, including the information specified under s. 281.35 (5) (a), if  
3 applicable. Owners contracting for a system, plant, or extension under the  
4 design-build construction process may submit to the department performance  
5 objectives and preliminary designs in a form that is satisfactory to the department,  
6 rather than complete plans. Material changes with a statement of the reasons shall  
7 be likewise submitted. Before plans are drawn, a statement concerning the  
8 improvement may be made to the department and the department may, if requested,  
9 outline generally what it will require. Upon receipt of the plans for approval, the  
10 department or its authorized representative shall notify the owner of the date of  
11 receipt.

12 (END)



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1861/4  
MES:cmh&jld:rs

**2003 SENATE BILL**

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.

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***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.

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

**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.

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*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

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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 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**

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) Any contract for public construction under sub. (1), the estimated cost of  
13 which exceeds \$4,000,000, may be let using the design-build construction process.

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**

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)