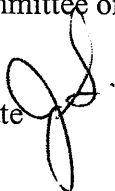


MEMORANDUM

TO: Honorable Members of the Senate Committee on Economic Development, Housing and Government Operations

FROM: Jennifer Sunstrom, Legislative Associate 

DATE: February 9, 2000

RE: Senate Bill 198

The Wisconsin Counties Association (WCA) supports Senate Bill 198, which authorizes 1st class cities, counties, metropolitan sewerage districts, technical colleges and federated public library systems, to let a contract for public construction, for which the estimated costs exceeds \$1,000,000, use the design-build construction process.

Under current law, counties are required to act as general contractors and construction managers on all public works projects. Serving as the general contractor exposes the county to liability should any of the contractors file lawsuits related to their ability to complete their portion of a project in a timely and cost-effective manner. In addition, the staff time required to coordinate multiple subcontractors on a given construction project represents a significant cost in employee hours to a county.

The design-build construction process provides many advantages for county government. The ability to combine design and construction contracting into a single agreement creates greater accountability, guaranteed costs, faster project completion, improved risk management, fewer administrative burdens, enhanced creativity, increased staff productivity and most importantly, increased cost savings for county government and Wisconsin taxpayers.

The design-build process is a growing trend accounting for almost 25% of all nonresidential construction in the United States. Wisconsin has authorized the design-build process for state-controlled projects, and other states have or are in the process of approving the design-build option for state and local units of government.

Given the increased demand for more efficient and cost-effective state and local government, the Wisconsin Counties Association believes that for the advantage of the taxpaying citizens, all options for the construction of municipal buildings should be made available.

Therefore, WCA respectfully request your support for Senate Bill 198.

If you have any questions, please do not hesitate to contact our office.



**STATE BAR
of WISCONSIN**

5302 Eastpark Blvd.
P.O. Box 7158
Madison, WI 53707-7158

MEMORANDUM

To: Members of the Senate Committee on Economic Development, Housing and Government Operations

From: Construction and Public Contract Law Section

Date: February 9, 2000

Re: Senate Bill 198 - Design-Build Construction

The Construction and Public Contract Law Section of the State Bar of Wisconsin is a Section whose member attorneys represent the interests of all aspects of the construction process (i.e., owners, general contractors, sub-contractors, suppliers, design professionals, etc.). The Section supports the general purpose and intent of the bill and feels there is a need to allow public works contracts to be performed under the design-build construction process. The Section would like to provide the Committee on Economic Development, Housing and Government Operations with the following comments regarding Senate Bill 198.

As stated, the Construction and Public Contract Law Section supports the intent of this legislation but after a full review of the bill in its present format it is the belief that certain revisions should be made to the current draft of the bill which would improve the process that the legislation is attempting to introduce into public works contracts and which would make the proposed design-build construction procedures similar to those already existing for other public works projects.

Some of the concerns and suggestions with regard to the current draft are as follows:

1. Section 59.52(29)(e) provides for bonding “. . . in an amount specified by the county. . .”. It could be argued or implied that this section removes design-build projects from the requirements of Section 779.14 which requires performance and payment bonds for public works projects. The Construction and Public Contract Law Section feels there should be uniformity in the bonding requirements whether or not the design-build process is used. Perhaps the intent is to allow the public body to specify an amount in excess of the 779.14 requirements. The current draft should be amended to make it clear that whether or not design-build is used, the bonding requirements of Section 779.14 should still be applicable.



SB 198 – Design-Build
Page 2

2. Proposed section 59.52(29)(d)2 requires that the selection of design-build teams be based on “factors” and then sets forth a number of factors. It appears that the intent is to include these itemized factors as “required” factors and allow the county to include other factors if they desire. It is suggested that a certain list of minimum factors be required and that the language be changed to read “. . . should be based on factors that shall include, at a minimum, the following: the background, experience and qualifications of the members of the teams; . . .”.

3. The Section also questions whether there should be some guidelines or limitations on when the design-build process can be used by a government entity. As drafted, it is possible that the design-build process could be used on any project in excess of \$1,000,000. It is suggested that the use of design-build be limited to situations where the contracting government entity can identify a reason, or reasons, that design-build should be used for the project. (For example, the need to complete the project on a fast track basis). It should not be used solely to avoid competitive bidding.

The Construction and Public Contract Law Section would be happy to provide attorneys experienced in design-build issues in Wisconsin and other states if it would help in finalizing this legislation. Please contact Ms. Jenny Boese at the State Bar of Wisconsin at 608-250-6045 or the Construction and Public Contract Law Section Chair, Dave MacDougall at 608-743-2940 if you wish any direct assistance.



202 State Street, Suite 300
Madison, Wisconsin 53703-2215

608/267-2380
800/991-5502
Fax: 608/267-0645
E Mail: League@lwm-info.org



No. 98-3

Authorization Of The Design-Build Construction Process

Whereas, "design-build" (D-B) is a growing trend accounting for almost 25% of all nonresidential construction in the United States, almost 50% in Europe, and 70% in Japan; and

Whereas, Wisconsin has authorized the D-B process for state-controlled projects, but not for local government projects; and

Whereas, other states have approved, or are in the process of approving, D-B for state government and local government projects; and

Whereas, the D-B delivery system combines design and construction contracting in one agreement and provides owners with one-stop shopping for all design and construction related activities; and

Whereas, in addition to single-source of responsibility, other advantages of D-B include enhanced creativity, guaranteed costs, faster project completion, improved risk management, fewer administrative burdens, and more productivity with same staff levels;

Now, Therefore, Be It Resolved, that the League of Wisconsin Municipalities in conference assembled on October 22, 1998, hereby urges the Governor and the Legislature to approve legislation authorizing local units of government to utilize the design-build process where appropriate.



Attest:

Dan Thompson

Dan Thompson, Executive Director

Laborers' International Union of North America

CHARLES B. FECTEAU
Business Manager

NACARCI E. FEASTER
Secretary-Treasurer



Local No. 113
6310 West Appleton Avenue
Telephone 873-4520
Milwaukee, Wis. 53210

Affiliated with
AFL-CIO and B.T.C.



February 8, 2000

State Senator Robert Wirch
310 S. State Capitol
Madison, WI 53707

Dear Senator Wirch:

I am writing to register my opposition to SB 198, a bill that would allow all units of government to use the design-build process on qualified public work projects.

While I have many problems with this proposal, I am going to focus my comments on the impact the bill will have on underground construction. I have over 30 years of underground experience, 10 as a superintendent for, at the time, one of the largest underground contractors in southeastern Wisconsin. While much has changed over the years in terms of technology and equipment, tunnel work remains the most uncertain and hazardous work environments in the construction industry.

A major contributor to the uncertainty and hazards of underground work are ground conditions. Ground conditions can change everyday, especially in soils transformed by retreating glaciers, as in the case throughout southeastern Wisconsin. I've seen projects delayed weeks at a time by uncharted boulders or by machinery literally swallowed by the earth. I've also rescued fellow workers trapped by fires and other injuries. If contractors were held responsible for the cost of changing conditions including water, methane gas, rocks, boulders, unstable ground conditions to support necessary equipment, etc., on the last five major underground projects in the Milwaukee area, as they could be under design-build, they would have gone out of business.

SB 198 ignores the fact that all construction is not the same. In work underground, it makes good sense to hold engineers responsible for design and contractors responsible to the design. In those instances where design-build makes sense, and where a proposal adequately protects workers and their

State Senator Robert Wirch
February 8, 2000
Page 2

employers, the decision to implement design-build can and should be made on a case by case basis based on the merits, and never as a simple open ended option.

Sincerely,

LABORERS' UNION, LOCAL NO. 113

Charles Fecteau

Charles Fecteau
Business Manager

CC: Economic Development, Housing, Government Operations Committee
Members

WISCONSIN LABORERS' DISTRICT COUNCIL

AFFILIATED WITH A.F.L.-C.I.O.
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA
2801 COHO STREET, SUITE 202 • MADISON, WISCONSIN 53713
PHONE (608) 274-5757 • FAX (608) 274-5707 — (800) 782-4634

MICHAEL R. RYAN
PRESIDENT/
BUSINESS MANAGER

THOMAS E. FISHER
SEC'Y-TREAS.
REC. SEC'Y

AARON G. COUILLARD
VICE-PRESIDENT

Memorandum/Correspondence

Date: February 8, 2000
To: Senate Economic Development, Housing, Government Operations
Committee, State Senator Robert Wirsch, Chair
From: Michael R. Ryan, Business Manager
Re: SB 198

The Wisconsin Laborers' District Council opposes SB 198, a bill that would authorize design-build construction on public works projects.

We feel the bill compromises the safety of construction workers by severely handicapping a worker's ability to deal with immediate or otherwise unforeseen safety issues. While it is true all workers have rights regarding workplace safety and health, it is also true that these issues are more often dealt with immediately at the site as opposed to a call to OSHA. The ugly truth of construction is that safety is too often compromised out of ignorance or neglect, not to mention in an effort to save time or money, as last year's tragedy at Miller Park illustrates.

We also believe the bill subverts Wisconsin's century-long commitment to fair and open competition on public works projects. Before tearing down the fence, it's important to remember why the fence is there. A long time ago the people of this state tired of the corruption plagued way in which public work and contracts were assigned at all levels of government. The process they formulated to fix the system – design-bid-build – is as inherently accountable to the public as design-build is not. Public entities have never been prohibited from implementing design-build on specific projects or type of work. They have merely had to seek legislative approval before hand to do so.

Thank you for considering our position on this matter. Feel free to call me if you have any questions regarding this issue.



SB-198
??

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC.
3 Bethesda Metro Center, Suite 1100, Bethesda, Maryland 20814 Phone (301) 657-3110 Fax (301) 215-4500

December 29, 1999

TO: John Grau
FROM: Bob White
RE: Revisions to Standing Policy Statement No. 7

As you know, earlier this year the Government Affairs Committee recommended eliminating the first numbered paragraph in old NECA Standing Policy No. 7 and the Board of Governors' affirmed this recommendation. The old policy indicated NECA's unilateral support for the traditional competitive contract method of procurement on public works. Because of the tremendous potential offered by the "performance contracting" procurement alternative being promoted by Prof. Dean Kashawagi of Arizona State University, it was deemed appropriate to remove the paragraph.

The state of Ohio is facing a situation where certain public entities have ignored competitive bidding in favor of an unregulated, highly arbitrary system of contractor selection which erroneously has been labeled "design-build" contracting. In reality it is a system which apparently allows the contracting agency or officer unbridled license to deal with hand-picked contractors and subcontractors in a non-competitive and highly subjective, uncontrolled environment.

While it was the intent in modifying Standing Policy Statement No. 7 to allow a wider choice of procurement alternatives than the traditional bid-award system, it was never the intent to eliminate the concept of fair, open ethical competition for public works contracts. NECA's Ohio chapters have requested alternative language to include in Standing Policy Statement No. 7 which would make this clear.

The proposed language submitted by Ted Williams, Vice President, District Two, appears to answer both our national needs and the concerns of the Ohio Chapter satisfactorily. Accordingly, since polling the Board of Governors is a cumbersome and costly procedure and the language proposed by District Two does not modify in any way the intent of NECA policy, it is suggested that, instead, if the Executive Committee approves the District Two language, we proceed as though it were enacted policy until such time as the Government Affairs Committee reviews it and the Board of Governors acts on it in due course.

The proposed language reads:

- 1) That all public works should be undertaken in a manner which assures full, fair and ethical competition by qualified, responsible construction contractors.

###

The Columbus Dispatch



Ohio's Greatest Home Newspaper



<http://libpub.dispatch.com/>
[Search](#)
[dispatch.com](#)

[Back to the home page](#)

Bill promotes no-bid contracts

The process of awarding contracts without considering price would create favoritism, critics say.

Saturday, July 17, 1999

By Robert Ruth

Dispatch Staff Reporter

Local governments' ability to award multimillion-dollar unbid contracts for construction projects would be greatly expanded under an industry-backed bill before the Ohio House.

House Bill 286 would allow all state, county and municipal agencies to hire companies to construct highways, sewer lines, bridges and buildings through a design-build contracting process.

The bill, before a subcommittee of the House Commerce and Labor Committee, is endorsed by the Ohio chapter of the Associated General Contractors, a trade organization representing hundreds of construction companies.

The design-build process in the bill, introduced by Rep. Kevin J. Coughlin, R-Cuyahoga Falls, would work like this:

An architectural or engineering firm would pair up with a construction company to submit a single proposal.

A governmental agency would solicit proposals from many of these partnerships.

Awarding a construction contract would be based primarily on a partnership's qualifications and experience, rather than on price.

After a single partnership is chosen, a governmental agency would negotiate a price for the job.

Supporters say the legislation would save money and time on construction projects. Critics fear it would further erode Ohio's competitive-bidding system and encourage contract-steering and favoritism.

Subjective criteria such as experience and qualifications leave politicians far too much leeway in the selection process, critics argue. Traditional

competitive-bidding bases the awarding of contracts primarily on which company submits the lowest price.

"This is ridiculous," Rep. Robert E. Netzley, R-Laura, said. "It opens the door for political deals, sweetheart contracts and preferential treatment."

But Coughlin said "design-build is popular in the private sector. It's not for all projects, but it's an advantage for some. Right now, we're locked into a rigid system."

The existing system requires separate contracts from an architect or an engineer, a general contractor and subcontractors for major parts of a project, Coughlin said. Under the design-build method, all contracts are combined into one. The system also encourages a closer -- relationship among architects and engineers and construction companies, he said.

State law already allows for no-bid contracts, in some cases, for the purchase of supplies, equipment and services. But unbid procurement contracts have caused hot debate in recent years. The latest procurement- contract issue involves a \$327.9 million unbid project to build a radio- communications network to link 12 state departments.

A partnership of Motorola of Schaumburg, Ill., and TRW of Lyndhurst, Ohio, was awarded the job in September after Ericsson of Stockholm, Sweden, the only other company to submit a proposal, was disqualified. Ericsson's initial proposal was \$200 million less than Motorola- TRW's.

Motorola-TRW had hired a politically influential lobbying company, Success Group, to represent it. At the time, Jan Allen was a minority partner and officer in Success Group.

William "Curt" Steiner, Allen's husband, became then-Gov. George V. Voinovich's chief of staff in August 1996 while the state was evaluating proposals from Motorola-TRW and Ericsson.

Then, in January, Steiner left his job in the governor's office to become chief executive officer of HMS Success Public Relations, a joint-venture business affiliated with Success Group.

Compounding problems with the contract, Senate Minority Whip Rhine McLin, D-Dayton, recently called on Inspector General Thomas Charles to investigate a subcontractor, Slane Co. of Gahanna, that has been hired by Motorola-TRW to help with the project.

Daniel Slane, owner of the subcontracting company, is a former fund- raiser and political ally of Voinovich's.

Steiner denies his former position with the governor's office aided Motorola-TRW.

"I informed the governor . . . that because of my relationship, it was important for me to recuse myself from any decisions involved in that," he said.

Steiner's wife distanced herself from Success Group after he became the governor's chief of staff, Steiner said. Allen divested her partnership interest in Success Group and resigned as an officer, but remained an employee. Slane and Michael Dawson, Voinovich's press secretary, also have denied that political considerations influenced the awarding of the contract.

Copyright © 1999, The Columbus Dispatch

inform

PRACTICE ISSUES FOR PROFESSIONAL
SERVICE FIRMS PUBLISHED BY
VICTOR O. SCHINNERER & CO., INC.

IN FOCUS ON RISK MANAGEMENT

INSIDE: LIABILITY UPDATE

Volume 12
Number 6
July 1999

Table Of Contents

2

**Missouri Five-Year
Statute of
Limitations
Interpreted to Allow
Suit by Owner
Against Design Firm**

**The Terrible Ten
Contract Provisions
(Part Three)**

3

**The Terrible Ten
Contract Provisions
(Part Three - cont.)**

4

**The Frequency of
Claims**

WHY CONTRACTORS NEED PROFESSIONAL LIABILITY INSURANCE COVERAGE

The evolution of the design and construction process has blurred the "bright line" dividing design services from construction work. With the increase in design-build — usually with a contractor at the design-build entity — and the clarification in A201 of the allocation or responsibility for ancillary design, design professionals should be aware of how the contractor on a project will cover design liability exposures.

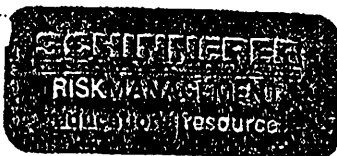
The Contractor as the Client There appears to be an increase in design professionals providing services directly to contractors. If the contractor is providing "a package" to an ultimate client, that contractor has the total exposure — including the vicarious liability for the services of any subcontracted professional services. At times contractors attempt to have the ultimate client "skip over" them to sue a design professional directly with the intention of avoiding, by contract, their legal responsibility. Other contractors simply ignore their design liability exposure or assume their general liability coverage will defend them or can be endorsed to cover the exposure.

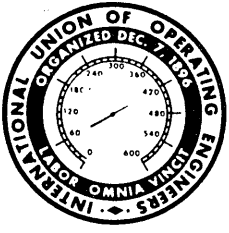
A CGL policy with an endorsement may not be adequate to protect the contractor. The subcontracting design professional, therefore, may have increased exposure for both its own professional services and any services provided by the contractor. Rather than being insulated from claims, the design professional's risk may be increased as clients attempt cost recovery and find contractors "unresponsive."

Joint Ventures In many contractor-design professional joint ventures, little advance planning is given to a reasonable allocation of risk. The design professional may be jointly and severally liable for exposures it can neither manage nor insure. Likewise, a contractor's risk may extend to professional liability exposures. Certainly a design professional does not want the other joint venture member to be "going bare" when design liability is such a great exposure.

Allocating Design Delivery to the Contractor Contractors routinely have been responsible for elements of design. While some of the risk of negligence for this design delegation stays with the prime design professional, much of the risk is shifted to those actually performing or furnishing the design services — the contractor or subcontracted professionals. This exposure should not be ignored by those parties or by the prime design professional.

When a contractor's responsibility goes beyond construction to project design or construction management, the need for contractors to carry professional liability coverage is intensified. CNA and Schinnerer's Contractors Program provides coverage for design services performed by the contractor's in-house staff, for construction management services, for joint ventures, and for the vicarious liability of the contractor when a design firm is a subcontractor. Project owners — and design professionals — should not let contractors ignore their design liability exposures.





International Union of Operating Engineers

LOCAL ONE HUNDRED AND THIRTY-NINE

CHARTERED FOR THE STATE OF WISCONSIN

N27 W23233 ROUNDY DRIVE P.O. BOX 130 PEWAUKEE, WISCONSIN 53072

PHONE: (414) 896-0139 FAX (414) 896-0758

DALE A. MILLER
Business Manager

To: Members of the Committee on Economic Development, Housing and Government Operations

From: Dale A. Miller, Business Manager, Operating Engineers Local 139

Date: February 9, 2000

Re: Opposition to Senate Bill 198

On behalf of our 8,000 members located throughout Wisconsin, the Operating Engineers Local 139 opposes Senate Bill 198, which would authorize all units of government to use the design-build construction process if the estimated cost of the project exceeds \$1,000,000.

For over 100 years, contractors in the state of Wisconsin have worked under a system of competitive bidding in the determination of who wins construction contracts on public projects. **The system has worked well.**

Under competitive bidding, the owner of a construction project accepts the lowest responsible bidder when awarding work. This is a win-win, not only for the governmental body, but also for the taxpayers. Contractors are forced to sharpen their pencils to win contracts and taxpayers benefit from lower costs associated with competition in bidding.

Senate Bill 198 would change this system by allowing all governmental entities to use the design-build construction process as an alternative to competitive bidding. In the bill, design-build is defined as a procurement process where the engineering, design and construction services are provided by a single entity.

Design-build may work on some projects, but it also has many potential pitfalls. We are worried that the design-build process could increase safety concerns on the job, give government a false sense of security about getting projects done on time and on budget, and hurt small to medium sized businesses that do not have the financial resources to have in-house design teams. In order to attempt to compete, these firms will have to seriously increase their payroll to compete.

We urge you to oppose Senate Bill 198 and support our tradition of requiring competitive bidding on public construction in Wisconsin.

BRANCH OFFICES:

Appleton: 5191 Abitz Road
Appleton, Wisconsin 54915
Phone: (920) 739-6378

Madison: 3231 Laura Lane
Middleton, Wisconsin 53562
Phone: (608) 836-0139

Eau Claire: 1003 Hillcrest Parkway
Altoona, Wisconsin 54720
Phone: (715) 838-0139

WICKWIRE GAVIN, P.C.
ATTORNEYS AT LAW

SUITE 800, 22 EAST MIFFLIN STREET
P.O. BOX 1683
MADISON, WISCONSIN 53701-1683
(608) 257-5335
FAX (608) 257-2029

INTERNATIONAL GATEWAY
SUITE 700
8100 BOONE BOULEVARD
VIENNA, VA 22182-7732
(703) 790-8750

SUITE 220
6411 IVY LANE
GREENBELT, MD 20770-1405
(301) 441-9420

TWO LAFAYETTE CENTRE
SUITE 450
1133 21ST STREET, N.W.
WASHINGTON, D.C. 20036-3302
(202) 887-5200

WICKWIRE GAVIN LLP
35TH FLOOR
777 SOUTH FIGUEROA STREET
LOS ANGELES, CA 90017-5831
(213) 688-9500

February 9, 2000

**STATEMENT OF ROBERT J. SMITH REGARDING SENATE BILL 198
PRESENTED TO THE COMMITTEE ON ECONOMIC DEVELOPMENT,
HOUSING AND GOVERNMENT OPERATIONS OF THE WISCONSIN STATE
SENATE, FEBRUARY 9, 2000**

INTRODUCTION

In its present form, SB 198 raises some important public policy issues which I believe should be of concern to the legislature. Though I do not support the bill as drafted, I certainly support the design/build process for public entities when it is properly applied. Accordingly, I offer what are intended to be constructive recommendations for amendments.

**THE ESSENTIAL FOUNDATION OF PUBLIC CONSTRUCTION
PROCUREMENT--PROVIDE VALUE TO THE TAXPAYERS USING A FAIR AND
OPEN PROCESS**

Any method of procurement for public works should always achieve two objectives:

- Provide value to the taxpayer by the use of competition, and
- Ensure fair treatment of all competitors in the selection process.

This is the norm and the cornerstone of public works contracting in the U.S. It is of great significance considering the hundreds of millions of dollars expended for public construction in Wisconsin each year. At present, our public procurement laws do a reasonably good job of achieving both of the above goals. Indeed, they have

STATEMENT OF ROBERT J. SMITH
REGARDING SENATE BILL 198
February 9, 2000
Page 2

occasionally been eroded by the courts and to be sure, there are problems with the pure low bid method of construction. However, the latter problems are often, to some extent, of a municipality's own making.

ISSUES THAT SHOULD BE ADDRESSED TO ACHIEVE FUNDAMENTAL
PUBLIC POLICY OBJECTIVES

1. Require a Project-Specific Finding that Design/Build is in the Best Interests of the Public

A gap in the proposed legislation, which is typically not found in design/build legislation in other states, is that there is blanket permission for public entities to use the process for any project over \$1 million. Unfortunately, this could open the door to municipalities being persuaded, without careful evaluation and comparison, that design/build will be best for the municipality in all instances. This is further fueled by the current popularity of design/build. While design/build may indeed be best for a proponent who happens to be a design/builder, it is not always best for the municipality. There are cost, time, and quality tradeoffs in any construction delivery system. The old saying that "there is no such thing as a free lunch" applies. Design/build has often been touted as offering time and cost savings. In some instances this is true, but in others it is not. Take cost for example. Public owners need to be aware of the total life-cycle cost of a project if they are to act in the best interest of the taxpayers. In the case of design/build, this means having an appreciation for the preprocurement costs of preparing design/build qualification and proposal documents. I believe that many public entities in Wisconsin are at present not in a position to do this. In addition, there are costs in the procurement and proposal evaluation phase which are typically greater than those in a traditional low bid method. Finally, and this is of extreme significance in design/build, we know that public facilities are designed to last a long time and are normally operated and maintained for even longer than their design life. Accordingly, the costs of operating and maintaining a building, such as energy or reroofing costs, need to be factored into the equation. Finally, in design/build, the cost of owner's staff or consultants to develop the process, design criteria, and performance specifications are sometimes minimized or overlooked.

STATEMENT OF ROBERT J. SMITH
REGARDING SENATE BILL 198

February 9, 2000

Page 3

Adding a requirement that there be a specific finding of design/build being in the best interest of the municipality on a project-by-project basis doesn't take anything away from the proposed legislation. Rather, it promotes an "eyes open" decision, including consideration of up-front costs and downstream risks. It will result in an informed decision, not one based on whim, rumor or peer pressure.

2. Require Greater Specificity in the Contractor Selection Process.

As drafted, the design/builder selection process seems quite loose and open. It could open the door to very subjective decision-making. In my opinion this is not in the public interest. For example, the bill refers to the "quality of the initial proposal" without any definition. This is unnecessarily vague. Similarly, the criteria for final selection are vague and not defined. It has been shown in other states that there are menas for making "apples to apples" compoarisons of proposals while still allowing some subjective evaluation. The fact is that developing requests for proposals for public works projects is quite challenging. And, clear, understandable selection criteria are essential to a process if it is to have fairness and integrity. When fairness and integrity are compromised, the taxpayers are ill-served. Additionally, this can lead to contract award disputes which in turn may delay contract award and increase the overall cost.

Similarly, there needs to be a better definition of the project specification process and requirements to avoid disputes over the sufficiency of contractor performance. Even in well-developed design/build projects, this sometimes leads to unfulfilled expectations and disputes.

SPECIFIC COMMENTS

1. SB 198 calls for selection of five or fewer prospective builders on the basis of qualifications. However, no minimum is required. This is not good public policy because it would permit a municipality to reduce or eliminate competition on the basis of initial submittals.

STATEMENT OF ROBERT J. SMITH
REGARDING SENATE BILL 198

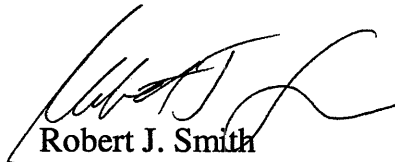
February 9, 2000

Page 4

2. At page 4, lines 22-23, the term “in a way that is satisfactory to the [municipality]” is used. However, this is extremely subjective and is nowhere defined.

Sincerely,

WICKWIRE GAVIN, P.C.



Robert J. Smith

WAUKESHA COUNTY



515 West Moreland Boulevard
Waukesha, Wisconsin 53188-2428

County Board Office

Phone: (414) 548-7002
Fax: (414) 548-7005

February 9, 2000

TO: Senator Robert Wirsch, Chair
Members of the Senate Committee on Economic Development

FR: Dave Krahn
Legislative Policy Advisor

RE: **Senate Bill 198 - Authorizes Local Units to Utilize Design-Build Construction Process**

Design-Build (D-B) is one of those concepts whose time has come. For the private sector, and for a number of states, it is a reality. It is in use in the construction industry around the country and internationally. And here in Wisconsin, the state has utilized D-B in some instances, including the Milwaukee Brewers stadium and the Midwest Express Center.

And now before you once again is an attempt to give local units of government the opportunity to employ the D-B method when contracting for building projects. SB 198, with a process clearly defined, opens the door for this innovative design and construction method, enabling local units to take advantage of the benefits of D-B, including guaranteed costs, faster project completion, improved risk management, fewer administrative burdens, not to mention the possibility of reduced overall price tags for property tax-financed projects.

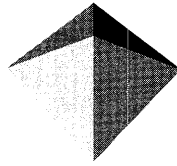
D-B is a tried and true idea that works. Now its time to allow local governments in Wisconsin to put this idea to work on behalf of the taxpayers, our mutual constituents.

Waukesha County urges you to approve SB 198.

Thank you for your consideration.

JUL - 8 1999

DBIA



DESIGN-BUILD
INSTITUTE OF AMERICA

June 29, 1999

Chairman Robert W. Wirch
Committee on Economic Development,
Housing and Government Operations
Wisconsin State Senate
310 South, Capitol
Madison, Wisconsin 53707

Dear Chairman Wirch:

Design-build is an innovative approach to project delivery for public and private owners, performed by a team of highly qualified design and construction professionals operating under a single contract. This approach provides single source accountability, eliminating costly disputes between the architect-engineers and contractors. It also maintains the principles of qualifications-based selection for design professionals and the cost competition for construction. Historically, most opposition stems from firms who have not worked under the design-build process and do not understand its inherent advantages. In fact, many firms, who previously feared design-build, have become enthusiastic supporters once they have participated in the design-build process.

The national marketplace has responded to design-build by dramatically increasing its use from only 5% of all construction in 1985 to 33% currently. In 2005, it is projected to surpass the traditional process of separate contracts for design and low-bid construction. The reason for this dramatic increase is evident in a recent university research study of 351 projects valued at \$20 billion, sponsored by the renowned Construction Industry Institute located at the University of Texas at Austin. Design-build, compared to the design-bid-build process, was 6% less in unit cost, 33% faster in elapsed design and construction time, and superior in all measures of quality. Although the private sector has led the way in the utilization of design-build, federal statutes allow its use, many federal agencies encourage it, and many states have followed suit. Twenty-eight states now allow design-build across the board, while fifteen more allow it on a limited use basis.

While the marketplace serves as the chief advocate for design-build, the Design-Build Institute of America (DBIA) was formed in 1993 as a non-profit industry association to serve as the center of expertise for responsible practice of this professional approach to project delivery. DBIA has become a forum for all participants in the project process and serves as the resource for best practices, documents and educational programs on design-build. DBIA currently counts nearly 600 design-build practitioners on its membership roles. As compiled by ENR magazine, DBIA members, which include integrated design-build firms, general contractors, architects, engineers, subcontractors, vendors and owners, account for over \$60 billion in construction put in place in 1998.

DBIA applauds Senators George, Huelsman, Roessler, Farrow and Rude for introducing SB 198 and Representatives Riley, Musser, Colon, Carpenter and Gronemus for their co-sponsorship of this measure. Our review found it to be a sound, well-written piece of legislation that will augment current project delivery methods in Wisconsin's public sector. As many other states have found, it is in the best interests of Wisconsin to have a full menu of project delivery options available for quality, cost effective, and timely capital improvements. Experience has clearly shown that design-build belongs among the options available for public works projects. The biggest barriers to realizing the advantages of design-build are outdated laws on the books that prevent this acquisition process. DBIA encourages State of Wisconsin to pass SB 198 to give their public agencies the latitude to choose from among a proven list of useful project delivery systems including the efficient practice of design-build, for projects exceeding \$1,000,000.

Sincerely,



James A. Broaddus, Ph.D., P.E.

cc: Senator Gary F. Drzewiecki
Senator Margaret A. Farrow
Senator Gary R. George
Senator Richard A. Grobschmidt
Senator Joanne B. Huelsman
Senator Gwendolynne S. Moore
Senator Carol A. Roessler
Senator Brian D. Rude
Senator David A. Zien

Representative Timothy Carpenter
Representative Pedro A. Colon
Representative Barbara Gronemus
Representative Terry M. Musser
Representative Antonio R. Riley