



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3185

Introduced 2/11/2020, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

30 ILCS 500/1-15.93
30 ILCS 500/30-30
30 ILCS 537/5
30 ILCS 537/10
30 ILCS 537/90 rep.

Amends the Illinois Procurement Code. Modifies the term "single prime" to mean the design-bid-build procurement delivery method for a building construction project in which the Capital Development Board or a public institution of higher education (currently, only the Capital Development Board) is the construction agency procuring 2 or more specified subdivisions of work. Provides that for building construction contracts in excess of \$250,000, separate specifications must (rather than may) be prepared for all equipment, labor, and materials in connection with the 5 subdivisions of the work to be performed. Modifies requirements concerning specifications to be drawn so as to permit separate and independent bidding. Provides requirements for single prime projects in which the Capital Development Board or an institution of higher education is the construction agency procuring for building construction contracts in excess of \$250,000. Amends the Design-Build Procurement Act. Provides that the term "State construction agency" as used in the Act includes institutions of higher education. Extends repeal and inoperative dates. Makes conforming changes. Effective immediately.

LRB101 17347 RJF 66752 b

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Procurement Code is amended by
5 changing Sections 1-15.93 and 30-30 as follows:

6 (30 ILCS 500/1-15.93)

7 (Section scheduled to be repealed on January 1, 2021)

8 Sec. 1-15.93. Single prime. "Single prime" means the
9 design-bid-build procurement delivery method for a building
10 construction project in which the Capital Development Board or
11 a public institution of higher education is the construction
12 agency procuring 2 or more subdivisions of work enumerated in
13 paragraphs (1) through (5) of subsection (a) of Section 30-30
14 of this Code under a single contract. This Section is repealed
15 on January 1, 2026 ~~2021~~.

16 (Source: P.A. 101-369, eff. 12-15-19.)

17 (30 ILCS 500/30-30)

18 Sec. 30-30. Design-bid-build construction.

19 (a) The provisions of this subsection are operative through
20 December 31, 2025 ~~2020~~.

21 Except as provided in subsections (a-5) or (a-10), for ~~For~~
22 building construction contracts in excess of \$250,000,

1 separate specifications must ~~may~~ be prepared for all equipment,
2 labor, and materials in connection with the following 5
3 subdivisions of the work to be performed:

4 (1) plumbing;

5 (2) heating, piping, refrigeration, and automatic
6 temperature control systems, including the testing and
7 balancing of those systems;

8 (3) ventilating and distribution systems for
9 conditioned air, including the testing and balancing of
10 those systems;

11 (4) electric wiring; and

12 (5) general contract work.

13 Except as provided in subsections (a-5) or (a-10), the ~~The~~
14 specifications must ~~may~~ be so drawn as to permit separate and
15 independent bidding upon each of the 5 subdivisions of work,
16 and all. ~~All~~ contracts awarded for any part thereof must ~~may~~
17 award the 5 subdivisions of work separately to responsible and
18 reliable persons, firms, or corporations engaged in these
19 classes of work. The contracts, at the discretion of the
20 construction agency, may be assigned to the successful bidder
21 on the general contract work or to the successful bidder on the
22 subdivision of work designated by the construction agency
23 before the bidding as the prime subdivision of work, provided
24 that all payments will be made directly to the contractors for
25 the 5 subdivisions of work upon compliance with the conditions
26 of the contract.

1 (a-5) Beginning on the effective date of this amendatory
2 Act of the 101st General Assembly and through December 31,
3 2025, for single prime projects in which the Capital
4 Development Board is the construction agency procuring for
5 building construction contracts in excess of \$250,000,
6 separate specifications may be prepared for all equipment,
7 labor, and materials in connection with the 5 subdivisions of
8 work enumerated in subsection (a). Any Capital Development
9 Board construction contracts awarded for any part thereof may
10 award 2 or more of the 5 subdivisions of work together or
11 separately to responsible and reliable persons, firms, or
12 corporations engaged in these classes of work.

13 For Capital Development Board single prime projects: (i)
14 the bid of the successful low bidder shall identify the name of
15 the subcontractor, if any, and the bid proposal costs for each
16 of the 5 subdivisions of work set forth in subsection (a); (ii)
17 the contract entered into with the successful bidder shall
18 provide that no identified subcontractor may be terminated
19 without the written consent of the Capital Development Board;
20 (iii) the contract shall comply with the disadvantaged business
21 practices of the Business Enterprise for Minorities, Women, and
22 Persons with Disabilities Act and the equal employment
23 practices of Section 2-105 of the Illinois Human Rights Act;
24 and (iv) the successful low bidder shall be prequalified by the
25 Capital Development Board.

26 With respect to any construction project described in this

1 subsection (a-5), the Capital Development Board shall: (i)
2 specify in writing as a public record that the project shall
3 comply with the Business Enterprise for Minorities, Women, and
4 Persons with Disabilities Act and the equal practices of the
5 Section 2-105 of the Illinois Human Rights Act; and (ii) report
6 annually to the Governor and General Assembly on the bidding,
7 award, and performance of all single prime projects.

8 (a-10) Beginning on the effective date of this amendatory
9 Act of the 101st General Assembly and through December 31,
10 2025, for single prime projects in which an institution of
11 higher education is a construction agency procuring for
12 building construction contracts in excess of \$250,000,
13 separate specifications may be prepared for all equipment,
14 labor, and materials in connection with the 5 subdivisions of
15 work enumerated in subsection (a). Any institution of higher
16 education contract awarded for any part thereof may award 2 or
17 more of the 5 subdivisions of work together or separately to
18 responsible and reliable persons, firms, or corporations
19 engaged in these classes of work if: (i) the institution of
20 higher education has submitted to the Procurement Policy Board
21 a written notice that shall include the reasons for using the
22 single prime method and an explanation of why the use of that
23 method is in the best interest of the State. The notice
24 provided under this item (i) shall be posted on the institution
25 of higher education's online procurement webpage and on the
26 online Procurement Bulletin at least 3 business days following

1 submission to the Procurement Policy Board; (ii) the successful
2 low bidder has prequalified with the institution of higher
3 education; (iii) the bid of the successful low bidder
4 identifies the name of the subcontractor, if any, and the bid
5 proposal costs for each of the 5 subdivisions of work set forth
6 in subsection (a); and (iv) the contract entered into with the
7 successful bidder provides that no identified subcontractor
8 may be terminated without the written consent of the
9 institution of higher education.

10 For building construction projects with a total
11 construction cost valued at \$20,000,000 or less, institutions
12 of higher education shall not use the single prime delivery
13 method for more than 50% of the total number of projects bid
14 for each fiscal year. Projects with a total construction cost
15 valued greater than \$20,000,000 may be bid using the single
16 prime delivery method at the discretion of the institution of
17 higher education.

18 With respect to any construction project described in this
19 subsection (a-10), the institution of higher education shall:
20 (i) specify in writing as a public record that the project
21 shall comply with the Business Enterprise for Minorities,
22 Women, and Persons with Disabilities Act and the equal
23 practices of Section 2-105 of the Illinois Human Rights Act;
24 and (ii) report annually to the Governor, General Assembly,
25 Procurement Policy Board, and Auditor General on the bidding,
26 award, and performance of all single prime projects. On or

1 after the effective date of this amendatory Act of the 10st
2 General Assembly, the institution of higher education may award
3 in each fiscal year single prime contracts with an aggregate
4 total value of no more than \$100,000,000. The Board of Trustees
5 of the University of Illinois may award in each fiscal year
6 single prime contracts with an aggregate total value of no more
7 than \$300,000,000.

8 ~~Beginning on the effective date of this amendatory Act of~~
9 ~~the 101st General Assembly and through December 31, 2020, for~~
10 ~~single prime projects: (i) the bid of the successful low bidder~~
11 ~~shall identify the name of the subcontractor, if any, and the~~
12 ~~bid proposal costs for each of the 5 subdivisions of work set~~
13 ~~forth in this Section; (ii) the contract entered into with the~~
14 ~~successful bidder shall provide that no identified~~
15 ~~subcontractor may be terminated without the written consent of~~
16 ~~the Capital Development Board; (iii) the contract shall comply~~
17 ~~with the disadvantaged business practices of the Business~~
18 ~~Enterprise for Minorities, Women, and Persons with~~
19 ~~Disabilities Act and the equal employment practices of Section~~
20 ~~2-105 of the Illinois Human Rights Act; and (iv) the Capital~~
21 ~~Development Board shall submit an annual report to the General~~
22 ~~Assembly and Governor on the bidding, award, and performance of~~
23 ~~all single prime projects.~~

24 ~~For building construction projects with a total~~
25 ~~construction cost valued at \$5,000,000 or less, the Capital~~
26 ~~Development Board shall not use the single prime procurement~~

1 ~~delivery method for more than 50% of the total number of~~
2 ~~projects bid for each fiscal year. Any project with a total~~
3 ~~construction cost valued greater than \$5,000,000 may be bid~~
4 ~~using single prime at the discretion of the Executive Director~~
5 ~~of the Capital Development Board.~~

6 (b) The provisions of this subsection are operative on and
7 after January 1, 2026 ~~2021~~. For building construction contracts
8 in excess of \$250,000, separate specifications shall be
9 prepared for all equipment, labor, and materials in connection
10 with the following 5 subdivisions of the work to be performed:

11 (1) plumbing;

12 (2) heating, piping, refrigeration, and automatic
13 temperature control systems, including the testing and
14 balancing of those systems;

15 (3) ventilating and distribution systems for
16 conditioned air, including the testing and balancing of
17 those systems;

18 (4) electric wiring; and

19 (5) general contract work.

20 The specifications must be so drawn as to permit separate
21 and independent bidding upon each of the 5 subdivisions of
22 work. All contracts awarded for any part thereof shall award
23 the 5 subdivisions of work separately to responsible and
24 reliable persons, firms, or corporations engaged in these
25 classes of work. The contracts, at the discretion of the
26 construction agency, may be assigned to the successful bidder

1 on the general contract work or to the successful bidder on the
2 subdivision of work designated by the construction agency
3 before the bidding as the prime subdivision of work, provided
4 that all payments will be made directly to the contractors for
5 the 5 subdivisions of work upon compliance with the conditions
6 of the contract.

7 (Source: P.A. 100-391, eff. 8-25-17; 101-369, eff. 12-15-19.)

8 Section 10. The Design-Build Procurement Act is amended by
9 changing Sections 5 and 10 as follows:

10 (30 ILCS 537/5)

11 (Section scheduled to be repealed on July 1, 2022)

12 Sec. 5. Legislative policy. It is the intent of the
13 General Assembly that the State construction agency ~~Capital~~
14 ~~Development Board~~ be allowed to use the design-build delivery
15 method for public projects if it is shown to be in the State's
16 best interest for that particular project. It shall be the
17 policy of the State construction agency ~~Capital Development~~
18 ~~Board~~ in the procurement of design-build services to publicly
19 announce all requirements for design-build services and to
20 procure these services on the basis of demonstrated competence
21 and qualifications and with due regard for the principles of
22 competitive selection.

23 The State construction agency ~~Capital Development Board~~
24 shall, prior to issuing requests for proposals, promulgate and

1 publish procedures for the solicitation and award of contracts
2 pursuant to this Act.

3 The State construction agency ~~Capital Development Board~~
4 shall, for each public project or projects permitted under this
5 Act, make a written determination, including a description as
6 to the particular advantages of the design-build procurement
7 method, that it is in the best interests of this State to enter
8 into a design-build contract for the project or projects. In
9 making that determination, the following factors shall be
10 considered:

11 (1) The probability that the design-build procurement
12 method will be in the best interests of the State by
13 providing a material savings of time or cost over the
14 design-bid-build or other delivery system.

15 (2) The type and size of the project and its
16 suitability to the design-build procurement method.

17 (3) The ability of the State construction agency to
18 define and provide comprehensive scope and performance
19 criteria for the project.

20 No State construction agency may use a design-build
21 procurement method unless the agency determines in writing that
22 the project will comply with the disadvantaged business and
23 equal employment practices of the State as established in the
24 Business Enterprise for Minorities, Women, and Persons with
25 Disabilities Act and Section 2-105 of the Illinois Human Rights
26 Act.

1 The State construction agency ~~Capital Development Board~~
2 shall within 15 days after the initial determination provide an
3 advisory copy to the Procurement Policy Board and maintain the
4 full record of determination for 5 years.

5 (Source: P.A. 100-391, eff. 8-25-17.)

6 (30 ILCS 537/10)

7 (Section scheduled to be repealed on July 1, 2022)

8 Sec. 10. Definitions. As used in this Act:

9 "State construction agency" means the Capital Development
10 Board and institutions of higher education.

11 "Delivery system" means the design and construction
12 approach used to develop and construct a project.

13 "Design-bid-build" means the traditional delivery system
14 used on public projects in this State that incorporates the
15 Architectural, Engineering, and Land Surveying Qualification
16 Based Selection Act (30 ILCS 535/) and the principles of
17 competitive selection in the Illinois Procurement Code (30 ILCS
18 500/).

19 "Design-build" means a delivery system that provides
20 responsibility within a single contract for the furnishing of
21 architecture, engineering, land surveying and related services
22 as required, and the labor, materials, equipment, and other
23 construction services for the project.

24 "Design-build contract" means a contract for a public
25 project under this Act between the State construction agency

1 and a design-build entity to furnish architecture,
2 engineering, land surveying, and related services as required,
3 and to furnish the labor, materials, equipment, and other
4 construction services for the project. The design-build
5 contract may be conditioned upon subsequent refinements in
6 scope and price and may allow the State construction agency to
7 make modifications in the project scope without invalidating
8 the design-build contract.

9 "Design-build entity" means any individual, sole
10 proprietorship, firm, partnership, joint venture, corporation,
11 professional corporation, or other entity that proposes to
12 design and construct any public project under this Act. A
13 design-build entity and associated design-build professionals
14 shall conduct themselves in accordance with the laws of this
15 State and the related provisions of the Illinois Administrative
16 Code, as referenced by the licensed design professionals Acts
17 of this State.

18 "Design professional" means any individual, sole
19 proprietorship, firm, partnership, joint venture, corporation,
20 professional corporation, or other entity that offers services
21 under the Illinois Architecture Practice Act of 1989 (225 ILCS
22 305/), the Professional Engineering Practice Act of 1989 (225
23 ILCS 325/), the Structural Engineering Licensing Act of 1989
24 (225 ILCS 340/), or the Illinois Professional Land Surveyor Act
25 of 1989 (225 ILCS 330/).

26 "Evaluation criteria" means the requirements for the

1 separate phases of the selection process as defined in this Act
2 and may include the specialized experience, technical
3 qualifications and competence, capacity to perform, past
4 performance, experience with similar projects, assignment of
5 personnel to the project, and other appropriate factors. Price
6 may not be used as a factor in the evaluation of Phase I
7 proposals.

8 "Proposal" means the offer to enter into a design-build
9 contract as submitted by a design-build entity in accordance
10 with this Act.

11 "Request for proposal" means the document used by the State
12 construction agency to solicit proposals for a design-build
13 contract.

14 "Scope and performance criteria" means the requirements
15 for the public project, including but not limited to, the
16 intended usage, capacity, size, scope, quality and performance
17 standards, life-cycle costs, and other programmatic criteria
18 that are expressed in performance-oriented and quantifiable
19 specifications and drawings that can be reasonably inferred and
20 are suited to allow a design-build entity to develop a
21 proposal.

22 (Source: P.A. 94-716, eff. 12-13-05.)

23 (30 ILCS 537/90 rep.)

24 Section 15. The Design-Build Procurement Act is amended by
25 repealing Section 90.

1 Section 99. Effective date. This Act takes effect December
2 15, 2020.