



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1535

Introduced 2/26/2021, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

30 ILCS 500/1-15.93
30 ILCS 500/30-30
30 ILCS 500/33-5
30 ILCS 500/33-50
30 ILCS 537/5
30 ILCS 537/10

Amends the Illinois Procurement Code. 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 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 and other changes. Effective December 15, 2021.

LRB102 15919 RJF 21288 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, 30-30, 33-5, and 33-50 as follows:

6 (30 ILCS 500/1-15.93)

7 (Section scheduled to be repealed on January 1, 2022)

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 This Section is repealed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, 2032 ~~2022~~.

16 (Source: P.A. 101-369, eff. 12-15-19; 101-645, eff. 6-26-20.)

17 (30 ILCS 500/30-30)

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

19 (a) The provisions of this subsection are operative
20 through December 31, 2031 ~~2021~~.

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 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 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 may award
17 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 102nd General Assembly and through December 31,
3 2031, 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
21 business practices of the Business Enterprise for Minorities,
22 Women, and Persons with Disabilities Act and the equal
23 employment practices of Section 2-105 of the Illinois Human
24 Rights Act; (iv) the successful low bidder shall be
25 prequalified by the Capital Development Board; and (v) until
26 December 31, 2026, for building construction projects with a

1 total construction cost valued at \$5,000,000 or less, the
2 Capital Development Board shall not use the single prime
3 delivery method for more than 50% of the total number of
4 projects bid for each fiscal year.

5 With respect to any construction project described in this
6 subsection (a-5), the Capital Development Board shall: (i)
7 specify in writing as a public record that the project shall
8 comply with the Business Enterprise for Minorities, Women, and
9 Persons with Disabilities Act and the equal employment
10 practices of Section 2-105 of the Illinois Human Rights Act;
11 and (ii) report annually to the Governor and General Assembly
12 on the bidding, award, and performance of all single prime
13 projects.

14 (a-10) Beginning on the effective date of this amendatory
15 Act of the 102nd General Assembly and through December 31,
16 2031, for single prime projects in which a public institution
17 of higher education is a construction agency procuring for
18 building construction contracts in excess of \$250,000,
19 separate specifications may be prepared for all equipment,
20 labor, and materials in connection with the 5 subdivisions of
21 work enumerated in subsection (a). Any public institution of
22 higher education contract awarded for any part thereof may
23 award 2 or more of the 5 subdivisions of work together or
24 separately to responsible and reliable persons, firms, or
25 corporations engaged in these classes of work if: (i) the
26 public institution of higher education has submitted to the

1 Procurement Policy Board a written notice that shall include
2 the reasons for using the single prime method and an
3 explanation of why the use of that method is in the best
4 interest of the State. The notice provided under this item (i)
5 shall be posted on the public institution of higher
6 education's online procurement webpage and on the online
7 Procurement Bulletin at least 3 business days following
8 submission to the Procurement Policy Board; (ii) the
9 successful low bidder has prequalified with the public
10 institution of higher education; (iii) the bid of the
11 successful low bidder identifies the name of the
12 subcontractor, if any, and the bid proposal costs for each of
13 the 5 subdivisions of work set forth in subsection (a); (iv)
14 the contract entered into with the successful bidder provides
15 that no identified subcontractor may be terminated without the
16 written consent of the public institution of higher education;
17 and (v) the successful low bidder has prequalified with the
18 University of Illinois or with Capital Development Board.

19 For building construction projects with a total
20 construction cost valued at \$20,000,000 or less, public
21 institutions of higher education shall not use the single
22 prime delivery method for more than 50% of the total number of
23 projects bid for each fiscal year. Projects with a total
24 construction cost valued greater than \$20,000,000 may be bid
25 using the single prime delivery method at the discretion of
26 the public institution of higher education.

1 With respect to any construction project described in this
2 subsection (a-10), the public institution of higher education
3 shall: (i) specify in writing as a public record that the
4 project shall comply with the Business Enterprise for
5 Minorities, Women, and Persons with Disabilities Act and the
6 equal employment practices of Section 2-105 of the Illinois
7 Human Rights Act; and (ii) report annually to the Governor,
8 General Assembly, Procurement Policy Board, and Auditor
9 General on the bidding, award, and performance of all single
10 prime projects. On or after the effective date of this
11 amendatory Act of the 102nd General Assembly, the public
12 institution of higher education may award in each fiscal year
13 single prime contracts with an aggregate total value of no
14 more than \$100,000,000. The Board of Trustees of the
15 University of Illinois may award in each fiscal year single
16 prime contracts with an aggregate total value of no more than
17 \$300,000,000.

18 ~~Beginning on the effective date of this amendatory Act of~~
19 ~~the 101st General Assembly and through December 31, 2020, for~~
20 ~~single prime projects: (i) the bid of the successful low~~
21 ~~bidder shall identify the name of the subcontractor, if any,~~
22 ~~and the bid proposal costs for each of the 5 subdivisions of~~
23 ~~work set forth in this Section; (ii) the contract entered into~~
24 ~~with the successful bidder shall provide that no identified~~
25 ~~subcontractor may be terminated without the written consent of~~
26 ~~the Capital Development Board; (iii) the contract shall comply~~

1 ~~with the disadvantaged business practices of the Business~~
2 ~~Enterprise for Minorities, Women, and Persons with~~
3 ~~Disabilities Act and the equal employment practices of Section~~
4 ~~2-105 of the Illinois Human Rights Act; and (iv) the Capital~~
5 ~~Development Board shall submit an annual report to the General~~
6 ~~Assembly and Governor on the bidding, award, and performance~~
7 ~~of all single prime projects.~~

8 ~~For building construction projects with a total~~
9 ~~construction cost valued at \$5,000,000 or less, the Capital~~
10 ~~Development Board shall not use the single prime procurement~~
11 ~~delivery method for more than 50% of the total number of~~
12 ~~projects bid for each fiscal year. Any project with a total~~
13 ~~construction cost valued greater than \$5,000,000 may be bid~~
14 ~~using single prime at the discretion of the Executive Director~~
15 ~~of the Capital Development Board.~~

16 (b) The provisions of this subsection are operative on and
17 after January 1, 2032 ~~2022~~. For building construction
18 contracts in excess of \$250,000, separate specifications shall
19 be prepared for all equipment, labor, and materials in
20 connection with the following 5 subdivisions of the work to be
21 performed:

22 (1) plumbing;

23 (2) heating, piping, refrigeration, and automatic
24 temperature control systems, including the testing and
25 balancing of those systems;

26 (3) ventilating and distribution systems for

1 conditioned air, including the testing and balancing of
2 those systems;

3 (4) electric wiring; and

4 (5) general contract work.

5 The specifications must be so drawn as to permit separate
6 and independent bidding upon each of the 5 subdivisions of
7 work. All contracts awarded for any part thereof shall award
8 the 5 subdivisions of work separately to responsible and
9 reliable persons, firms, or corporations engaged in these
10 classes of work. The contracts, at the discretion of the
11 construction agency, may be assigned to the successful bidder
12 on the general contract work or to the successful bidder on the
13 subdivision of work designated by the construction agency
14 before the bidding as the prime subdivision of work, provided
15 that all payments will be made directly to the contractors for
16 the 5 subdivisions of work upon compliance with the conditions
17 of the contract.

18 (Source: P.A. 100-391, eff. 8-25-17; 101-369, eff. 12-15-19;
19 101-645, eff. 6-26-20.)

20 (30 ILCS 500/33-5)

21 Sec. 33-5. Definitions. In this Article:

22 "Construction management services" includes:

23 (1) services provided in the planning and
24 pre-construction phases of a construction project
25 including, but not limited to, consulting with, advising,

1 assisting, and making recommendations to the ~~Capital~~
2 ~~Development~~ Board and architect, engineer, or licensed
3 land surveyor on all aspects of planning for project
4 construction; reviewing all plans and specifications as
5 they are being developed and making recommendations with
6 respect to construction feasibility, availability of
7 material and labor, time requirements for procurement and
8 construction, and projected costs; making, reviewing, and
9 refining budget estimates based on the Board's program and
10 other available information; making recommendations to the
11 Board and the architect or engineer regarding the division
12 of work in the plans and specifications to facilitate the
13 bidding and awarding of contracts; soliciting the interest
14 of capable contractors and taking bids on the project;
15 analyzing the bids received; and preparing and maintaining
16 a progress schedule during the design phase of the project
17 and preparation of a proposed construction schedule; and

18 (2) services provided in the construction phase of the
19 project including, but not limited to, maintaining
20 competent supervisory staff to coordinate and provide
21 general direction of the work and progress of the
22 contractors on the project; directing the work as it is
23 being performed for general conformance with working
24 drawings and specifications; establishing procedures for
25 coordinating among the Board, architect or engineer,
26 contractors, and construction manager with respect to all

1 aspects of the project and implementing those procedures;
2 maintaining job site records and making appropriate
3 progress reports; implementing labor policy in conformance
4 with the requirements of the public owner; reviewing the
5 safety and equal opportunity programs of each contractor
6 for conformance with the public owner's policy and making
7 recommendations; reviewing and processing all applications
8 for payment by involved contractors and material suppliers
9 in accordance with the terms of the contract; making
10 recommendations and processing requests for changes in the
11 work and maintaining records of change orders; scheduling
12 and conducting job meetings to ensure orderly progress of
13 the work; developing and monitoring a project progress
14 schedule, coordinating and expediting the work of all
15 contractors and providing periodic status reports to the
16 owner and the architect or engineer; and establishing and
17 maintaining a cost control system and conducting meetings
18 to review costs.

19 "Construction manager" means any individual, sole
20 proprietorship, firm, partnership, corporation, or other legal
21 entity providing construction management services for the
22 Board and prequalified by the State in accordance with 30 ILCS
23 500/33-10.

24 "Board" means the Capital Development Board and public
25 institutions of higher education.

26 (Source: P.A. 94-532, eff. 8-10-05.)

1 (30 ILCS 500/33-50)

2 Sec. 33-50. Duties of construction manager; additional
3 requirements for persons performing construction work.

4 (a) Upon the award of a construction management services
5 contract, a construction manager must contract with the Board
6 to furnish his or her skill and judgment in cooperation with,
7 and reliance upon, the services of the project architect or
8 engineer. The construction manager must furnish business
9 administration, management of the construction process, and
10 other specified services to the Board and must perform his or
11 her obligations in an expeditious and economical manner
12 consistent with the interest of the Board. If it is in the
13 State's best interest, the construction manager may provide or
14 perform basic services for which reimbursement is provided in
15 the general conditions to the construction management services
16 contract.

17 (b) The actual construction work on the project must be
18 awarded to contractors under this Code. The ~~Capital~~
19 ~~Development~~ Board may further separate additional divisions of
20 work under this Article. This subsection is subject to the
21 applicable provisions of the following Acts:

- 22 (1) the Prevailing Wage Act;
- 23 (2) the Public Construction Bond Act;
- 24 (3) the Public Works Employment Discrimination Act;
- 25 (4) the Public Works Preference Act (repealed on June

1 16, 2010 by Public Act 96-929);
2 (5) the Employment of Illinois Workers on Public Works
3 Act;
4 (6) the Public Contract Fraud Act;
5 (7) (blank); and
6 (8) the Illinois Architecture Practice Act of 1989,
7 the Professional Engineering Practice Act of 1989, the
8 Illinois Professional Land Surveyor Act of 1989, and the
9 Structural Engineering Practice Act of 1989.
10 (Source: P.A. 101-149, eff. 7-26-19.)

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

13 (30 ILCS 537/5)

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

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

1 competitive selection.

2 The State construction agency ~~Capital Development Board~~
3 shall, prior to issuing requests for proposals, promulgate and
4 publish procedures for the solicitation and award of contracts
5 pursuant to this Act.

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

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

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

20 (3) The ability of the State construction agency to
21 define and provide comprehensive scope and performance
22 criteria for the project.

23 No State construction agency may use a design-build
24 procurement method unless the agency determines in writing
25 that the project will comply with the disadvantaged business
26 and equal employment practices of the State as established in

1 the Business Enterprise for Minorities, Women, and Persons
2 with Disabilities Act and Section 2-105 of the Illinois Human
3 Rights Act.

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

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

9 (30 ILCS 537/10)

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

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

12 "State construction agency" means the Capital Development
13 Board and public institutions of higher education.

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

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

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

1 construction services for the project.

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

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

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

1 (225 ILCS 340/), or the Illinois Professional Land Surveyor
2 Act of 1989 (225 ILCS 330/).

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

11 "Proposal" means the offer to enter into a design-build
12 contract as submitted by a design-build entity in accordance
13 with this Act.

14 "Request for proposal" means the document used by the
15 State construction agency to solicit proposals for a
16 design-build contract.

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

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

26 Section 99. Effective date. This Act takes effect December

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1 15, 2021.