

SB3826



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3826

Introduced 1/21/2022, 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
30 ILCS 537/90

Amends the Illinois Procurement Code. Modifies provisions concerning design-bid-build construction and requirements concerning the use of the single prime procurement delivery method for specified building construction projects. 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.

LRB102 23878 RJF 33072 b

A BILL FOR

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7 (Section scheduled to be repealed on January 1, 2024)

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 This Section is repealed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, 2025 ~~2024~~.

16 (Source: P.A. 101-369, eff. 12-15-19; 101-645, eff. 6-26-20;
17 102-671, eff. 11-30-21.)

18 (30 ILCS 500/30-30)

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

20 (a) The provisions of this subsection are operative
21 through December 31, 2024~~2023~~.

22 Except as provided in subsection (a-5), for~~For~~ building

1 construction contracts in excess of \$250,000, separate
2 specifications may be prepared for all equipment, labor, and
3 materials in connection with the following 5 subdivisions of
4 the work to be performed:

5 (1) plumbing;

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

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

12 (4) electric wiring; and

13 (5) general contract work.

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

1 of the contract.

2 Beginning on the effective date of this amendatory Act of
3 the 101st General Assembly and through December 31, 2024 ~~2023~~,
4 for single prime projects: (i) the bid of the successful low
5 bidder shall identify the name of the subcontractor, if any,
6 and the bid proposal costs for each of the 5 subdivisions of
7 work set forth in this Section; (ii) the contract entered into
8 with the successful bidder shall provide that no identified
9 subcontractor may be terminated without the written consent of
10 the Capital Development Board; (iii) the contract shall comply
11 with the disadvantaged business practices of the Business
12 Enterprise for Minorities, Women, and Persons with
13 Disabilities Act and the equal employment practices of Section
14 2-105 of the Illinois Human Rights Act; and (iv) the Capital
15 Development Board shall submit an annual report to the General
16 Assembly and Governor on the bidding, award, and performance
17 of all single prime projects.

18 For building construction projects with a total
19 construction cost valued at \$5,000,000 or less, the Capital
20 Development Board shall not use the single prime procurement
21 delivery method for more than 50% of the total number of
22 projects bid for each fiscal year. Any project with a total
23 construction cost valued greater than \$5,000,000 may be bid
24 using single prime at the discretion of the Executive Director
25 of the Capital Development Board.

26 (a-5) Beginning on the effective date of this amendatory

1 Act of the 102nd General Assembly and through December 31,
2 2024, for single prime projects in which a public institution
3 of higher education is a construction agency procuring for
4 building construction contracts in excess of \$250,000,
5 separate specifications may be prepared for all equipment,
6 labor, and materials in connection with the 5 subdivisions of
7 work enumerated in subsection (a). Any public institution of
8 higher education contract awarded for any part thereof may
9 award 2 or more of the 5 subdivisions of work together or
10 separately to responsible and reliable persons, firms, or
11 corporations engaged in these classes of work if: (i) the
12 public institution of higher education has submitted to the
13 Procurement Policy Board a written notice that shall include
14 the reasons for using the single prime method and an
15 explanation of why the use of that method is in the best
16 interest of the State. The notice provided under this item (i)
17 shall be posted on the public institution of higher
18 education's online procurement webpage and on the online
19 Procurement Bulletin at least 3 business days following
20 submission to the Procurement Policy Board; (ii) the
21 successful low bidder has prequalified with the public
22 institution of higher education; (iii) the bid of the
23 successful low bidder identifies the name of the
24 subcontractor, if any, and the bid proposal costs for each of
25 the 5 subdivisions of work set forth in subsection (a); (iv)
26 the contract entered into with the successful bidder provides

1 that no identified subcontractor may be terminated without the
2 written consent of the public institution of higher education;
3 and (v) the successful low bidder has prequalified with the
4 University of Illinois or with Capital Development Board.

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

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

1 University of Illinois may award in each fiscal year single
2 prime contracts with an aggregate total value of no more than
3 \$300,000,000.

4 (b) The provisions of this subsection are operative on and
5 after January 1, 2025 ~~2024~~. For building construction
6 contracts in excess of \$250,000, separate specifications shall
7 be prepared for all equipment, labor, and materials in
8 connection with the following 5 subdivisions of the work to be
9 performed:

10 (1) plumbing;

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

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

17 (4) electric wiring; and

18 (5) general contract work.

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

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

6 (Source: P.A. 101-369, eff. 12-15-19; 101-645, eff. 6-26-20;
7 102-671, eff. 11-30-21.)

8 (30 ILCS 500/33-5)

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

10 "Construction management services" includes:

11 (1) services provided in the planning and
12 pre-construction phases of a construction project
13 including, but not limited to, consulting with, advising,
14 assisting, and making recommendations to the ~~Capital~~
15 ~~Development~~ Board and architect, engineer, or licensed
16 land surveyor on all aspects of planning for project
17 construction; reviewing all plans and specifications as
18 they are being developed and making recommendations with
19 respect to construction feasibility, availability of
20 material and labor, time requirements for procurement and
21 construction, and projected costs; making, reviewing, and
22 refining budget estimates based on the Board's program and
23 other available information; making recommendations to the
24 Board and the architect or engineer regarding the division
25 of work in the plans and specifications to facilitate the

1 bidding and awarding of contracts; soliciting the interest
2 of capable contractors and taking bids on the project;
3 analyzing the bids received; and preparing and maintaining
4 a progress schedule during the design phase of the project
5 and preparation of a proposed construction schedule; and

6 (2) services provided in the construction phase of the
7 project including, but not limited to, maintaining
8 competent supervisory staff to coordinate and provide
9 general direction of the work and progress of the
10 contractors on the project; directing the work as it is
11 being performed for general conformance with working
12 drawings and specifications; establishing procedures for
13 coordinating among the Board, architect or engineer,
14 contractors, and construction manager with respect to all
15 aspects of the project and implementing those procedures;
16 maintaining job site records and making appropriate
17 progress reports; implementing labor policy in conformance
18 with the requirements of the public owner; reviewing the
19 safety and equal opportunity programs of each contractor
20 for conformance with the public owner's policy and making
21 recommendations; reviewing and processing all applications
22 for payment by involved contractors and material suppliers
23 in accordance with the terms of the contract; making
24 recommendations and processing requests for changes in the
25 work and maintaining records of change orders; scheduling
26 and conducting job meetings to ensure orderly progress of

1 the work; developing and monitoring a project progress
2 schedule, coordinating and expediting the work of all
3 contractors and providing periodic status reports to the
4 owner and the architect or engineer; and establishing and
5 maintaining a cost control system and conducting meetings
6 to review costs.

7 "Construction manager" means any individual, sole
8 proprietorship, firm, partnership, corporation, or other legal
9 entity providing construction management services for the
10 Board and prequalified by the State in accordance with 30 ILCS
11 500/33-10.

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

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

15 (30 ILCS 500/33-50)

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

18 (a) Upon the award of a construction management services
19 contract, a construction manager must contract with the Board
20 to furnish his or her skill and judgment in cooperation with,
21 and reliance upon, the services of the project architect or
22 engineer. The construction manager must furnish business
23 administration, management of the construction process, and
24 other specified services to the Board and must perform his or
25 her obligations in an expeditious and economical manner

1 consistent with the interest of the Board. If it is in the
2 State's best interest, the construction manager may provide or
3 perform basic services for which reimbursement is provided in
4 the general conditions to the construction management services
5 contract.

6 (b) The actual construction work on the project must be
7 awarded to contractors under this Code. The ~~Capital~~
8 ~~Development~~ Board may further separate additional divisions of
9 work under this Article. This subsection is subject to the
10 applicable provisions of the following Acts:

- 11 (1) the Prevailing Wage Act;
- 12 (2) the Public Construction Bond Act;
- 13 (3) the Public Works Employment Discrimination Act;
- 14 (4) the Public Works Preference Act (repealed on June
15 16, 2010 by Public Act 96-929);
- 16 (5) the Employment of Illinois Workers on Public Works
17 Act;
- 18 (6) the Public Contract Fraud Act;
- 19 (7) (blank); and
- 20 (8) the Illinois Architecture Practice Act of 1989,
21 the Professional Engineering Practice Act of 1989, the
22 Illinois Professional Land Surveyor Act of 1989, and the
23 Structural Engineering Practice Act of 1989.

24 (Source: P.A. 101-149, eff. 7-26-19.)

25 Section 10. The Design-Build Procurement Act is amended by

1 changing Sections 5, 10, and 90 as follows:

2 (30 ILCS 537/5)

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

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

15 The State construction agency ~~Capital Development Board~~
16 shall, prior to issuing requests for proposals, promulgate and
17 publish procedures for the solicitation and award of contracts
18 pursuant to this Act.

19 The State construction agency ~~Capital Development Board~~
20 shall, for each public project or projects permitted under
21 this Act, make a written determination, including a
22 description as to the particular advantages of the
23 design-build procurement method, that it is in the best
24 interests of this State to enter into a design-build contract
25 for the project or projects. In making that determination, the

1 following factors shall be considered:

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

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

8 (3) The ability of the State construction agency to
9 define and provide comprehensive scope and performance
10 criteria for the project.

11 No State construction agency may use a design-build
12 procurement method unless the agency determines in writing
13 that the project will comply with the disadvantaged business
14 and equal employment practices of the State as established in
15 the Business Enterprise for Minorities, Women, and Persons
16 with Disabilities Act and Section 2-105 of the Illinois Human
17 Rights Act.

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

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

23 (30 ILCS 537/10)

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

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

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

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

5 "Design-bid-build" means the traditional delivery system
6 used on public projects in this State that incorporates the
7 Architectural, Engineering, and Land Surveying Qualification
8 Based Selection Act (30 ILCS 535/) and the principles of
9 competitive selection in the Illinois Procurement Code (30
10 ILCS 500/).

11 "Design-build" means a delivery system that provides
12 responsibility within a single contract for the furnishing of
13 architecture, engineering, land surveying and related services
14 as required, and the labor, materials, equipment, and other
15 construction services for the project.

16 "Design-build contract" means a contract for a public
17 project under this Act between the State construction agency
18 and a design-build entity to furnish architecture,
19 engineering, land surveying, and related services as required,
20 and to furnish the labor, materials, equipment, and other
21 construction services for the project. The design-build
22 contract may be conditioned upon subsequent refinements in
23 scope and price and may allow the State construction agency to
24 make modifications in the project scope without invalidating
25 the design-build contract.

26 "Design-build entity" means any individual, sole

1 proprietorship, firm, partnership, joint venture, corporation,
2 professional corporation, or other entity that proposes to
3 design and construct any public project under this Act. A
4 design-build entity and associated design-build professionals
5 shall conduct themselves in accordance with the laws of this
6 State and the related provisions of the Illinois
7 Administrative Code, as referenced by the licensed design
8 professionals Acts of this State.

9 "Design professional" means any individual, sole
10 proprietorship, firm, partnership, joint venture, corporation,
11 professional corporation, or other entity that offers services
12 under the Illinois Architecture Practice Act of 1989 (225 ILCS
13 305/), the Professional Engineering Practice Act of 1989 (225
14 ILCS 325/), the Structural Engineering Licensing Act of 1989
15 (225 ILCS 340/), or the Illinois Professional Land Surveyor
16 Act of 1989 (225 ILCS 330/).

17 "Evaluation criteria" means the requirements for the
18 separate phases of the selection process as defined in this
19 Act and may include the specialized experience, technical
20 qualifications and competence, capacity to perform, past
21 performance, experience with similar projects, assignment of
22 personnel to the project, and other appropriate factors. Price
23 may not be used as a factor in the evaluation of Phase I
24 proposals.

25 "Proposal" means the offer to enter into a design-build
26 contract as submitted by a design-build entity in accordance

1 with this Act.

2 "Request for proposal" means the document used by the
3 State construction agency to solicit proposals for a
4 design-build contract.

5 "Scope and performance criteria" means the requirements
6 for the public project, including but not limited to, the
7 intended usage, capacity, size, scope, quality and performance
8 standards, life-cycle costs, and other programmatic criteria
9 that are expressed in performance-oriented and quantifiable
10 specifications and drawings that can be reasonably inferred
11 and are suited to allow a design-build entity to develop a
12 proposal.

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

14 (30 ILCS 537/90)

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

16 Sec. 90. Repealer. This Act is repealed on January 1, 2025
17 ~~July 1, 2022~~.

18 (Source: P.A. 100-1189, eff. 4-5-19.)