



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB0518

Introduced 2/17/2005, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

- 30 ILCS 500/Art. 33 heading new
- 30 ILCS 500/33-5 new
- 30 ILCS 500/33-10 new
- 30 ILCS 500/33-15 new
- 30 ILCS 500/33-20 new
- 30 ILCS 500/33-25 new
- 30 ILCS 500/33-30 new
- 30 ILCS 500/33-35 new
- 30 ILCS 500/33-40 new
- 30 ILCS 500/33-45 new
- 30 ILCS 500/33-50 new
- 30 ILCS 500/33-55 new

Amends the Illinois Procurement Code. Sets procedures for the award of contracts for construction management services. Requires State agencies to provide public notice of all projects requiring construction management services. Provides procedures for the selection of construction managers and for contract negotiations. Requires State agencies to evaluate construction management firms at the completion of a project. Sets the duties of construction managers. Provides that actual construction work on the project must be awarded under the Procurement Code. Authorizes the Capital Development Board to further separate divisions of construction management work. Effective immediately.

LRB094 08764 RSP 38977 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning procurement.

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 adding Article 33 as follows:

6 (30 ILCS 500/Art. 33 heading new)

7 ARTICLE 33. CONSTRUCTION MANAGEMENT SERVICES

8 (30 ILCS 500/33-5 new)

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 State agency
15 and architect, engineer, or licensed land surveyor on all
16 aspects of planning for project construction; reviewing
17 all plans and specifications as they are being developed
18 and making recommendations with respect to construction
19 feasibility, availability of material and labor, time
20 requirements for procurement and construction, and
21 projected costs; making, reviewing, and refining budget
22 estimates based on the State agency's program and other
23 available information; making recommendations to the State
24 agency and the architect or engineer regarding the division
25 of work in the plans and specifications to facilitate the
26 bidding and awarding of contracts; soliciting the interest
27 of capable contractors and taking bids on the project;
28 analyzing the bids received; and preparing and maintaining
29 a progress schedule during the design phase of the project
30 and preparation of a proposed construction schedule; and

31 (2) services provided in the construction phase of the

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

27 "Construction manager" means any individual, sole
28 proprietorship, firm, partnership, corporation, or other legal
29 entity providing construction management services for a State
30 agency and prequalified by the State of Illinois in accordance
31 with 30 ILCS 500/33-10.

32 (30 ILCS 500/33-10 new)

33 Sec. 33-10. Prequalification. A State agency shall
34 establish procedures to prequalify firms seeking to provide
35 construction management services or may use prequalification

1 lists from other State agencies to meet the requirements of
2 this Section.

3 (30 ILCS 500/33-15 new)

4 Sec. 33-15. Public notice. Whenever a project requiring
5 construction management services is proposed for a State
6 agency, the State agency shall provide no less than a 14-day
7 advance notice published in a request for proposals setting
8 forth the projects and services to be procured. The request for
9 proposals shall be mailed to each firm that is prequalified
10 under Section 33-10. The request for proposals shall include a
11 description of each project and shall state the time and place
12 for interested firms to submit a letter of interest and, if
13 required by the request for proposals, a statement of
14 qualifications.

15 (30 ILCS 500/33-20 new)

16 Sec. 33-20. Evaluation procedure. A State agency shall
17 evaluate the construction managers submitting letters of
18 interest and other prequalified construction managers, taking
19 into account qualifications; and the State agency may consider,
20 but shall not be limited to considering, ability of personnel,
21 past record and experience, performance data on file,
22 willingness to meet time requirements, location, workload of
23 the construction manager, and any other qualifications-based
24 factors as the State agency may determine in writing are
25 applicable. The State agency may conduct discussions with and
26 require public presentations by construction managers deemed
27 to be the most qualified regarding their qualifications,
28 approach to the project, and ability to furnish the required
29 services.

30 A State agency shall establish a committee to select
31 construction managers to provide construction management
32 services. A selection committee may include at least one public
33 member. The public member may not be employed or associated
34 with any firm holding a contract with the State agency nor may

1 the public member's firm be considered for a contract with that
2 State agency while he or she is serving as a public member of
3 the committee.

4 In no case shall a State agency, prior to selecting a
5 construction manager for negotiation under Section 33-30, seek
6 formal or informal submission of verbal or written estimates of
7 costs or proposals in terms of dollars, hours required,
8 percentage of construction cost, or any other measure of
9 compensation.

10 (30 ILCS 500/33-25 new)

11 Sec. 33-25. Selection Procedure. On the basis of
12 evaluations, discussions, and any presentations, the State
13 agency shall select no less than 3 firms it determines to be
14 qualified to provide services for the project and rank them in
15 order of qualifications to provide services regarding the
16 specific project. The State agency shall then contract at a
17 fair and reasonable compensation. If fewer than 3 firms submit
18 letters of interest and the State agency determines that one or
19 both of those firms are so qualified, the State agency may
20 proceed to negotiate a contract under Section 33-30. The
21 decision of the State agency shall be final and binding.

22 (30 ILCS 500/33-30 new)

23 Sec. 33-30. Contract Negotiation.

24 (a) The State agency shall prepare a written description of
25 the scope of the proposed services to be used as a basis for
26 negotiations and shall negotiate a contract with the highest
27 ranked construction management firm at compensation that the
28 State agency determines in writing to be fair and reasonable.
29 In making this decision, the State agency shall take into
30 account the estimated value, scope, complexity, and nature of
31 the services to be rendered. In no case may a State agency
32 establish a payment formula designed to eliminate firms from
33 contention or restrict competition or negotiation of fees.

34 (b) If the State agency is unable to negotiate a

1 satisfactory contract with the firm that is highest ranked,
2 negotiations with that firm shall be terminated. The State
3 agency shall then begin negotiations with the firm that is next
4 highest ranked. If the State agency is unable to negotiate a
5 satisfactory contract with that firm, negotiations with that
6 firm shall be terminated. The State agency shall then begin
7 negotiations with the firm that is next highest ranked.

8 (c) If the State agency is unable to negotiate a
9 satisfactory contract with any of the selected firms, the State
10 agency shall re-evaluate the construction management services
11 requested, including the estimated value, scope, complexity,
12 and fee requirements. The State agency shall then compile a
13 list of not less than 3 prequalified firms and proceed in
14 accordance with the provisions of this Act.

15 (30 ILCS 500/33-35 new)

16 Sec. 33-35. Small Contracts. The provisions of Sections
17 33-20, 33-25, and 33-30 do not apply to construction management
18 contracts of less than \$25,000.

19 (30 ILCS 500/33-40 new)

20 Sec. 33-40. Emergency services. Sections 33-20, 33-25, and
21 33-30 do not apply in the procurement of construction
22 management services by State agencies (i) when an agency
23 determines in writing that it is in the best interest of the
24 State to proceed with the immediate selection of a firm or (ii)
25 in emergencies when immediate services are necessary to protect
26 the public health and safety, including, but not limited to,
27 earthquake, tornado, storm, or natural or man-made disaster.

28 (30 ILCS 500/33-45 new)

29 Sec. 33-45. Firm performance evaluation. Each State agency
30 shall evaluate the performance of each firm upon completion of
31 a contract. That evaluation shall be made available to the firm
32 and the firm may submit a written response, with the evaluation
33 and response retained solely by the agency. The evaluation and

1 response shall not be made available to any other person or
2 firm and is exempt from disclosure under the Freedom of
3 Information Act. The evaluation shall be based on the terms
4 identified in the construction manager's contract.

5 (30 ILCS 500/33-50 new)

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

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

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

26 (1) the Prevailing Wage Act;

27 (2) the Public Construction Bond Act;

28 (3) the Public Works Employment Discrimination Act;

29 (4) the Public Works Preference Act;

30 (5) the Employment of Illinois Workers on Public Works
31 Act;

32 (6) the Public Contract Fraud Act;

33 (7) the Illinois Construction Evaluation Act; and

34 (8) the Illinois Architecture Practice Act of 1989, the
35 Professional Engineering Practice Act of 1989, the

1 Illinois Professional Land Surveyor Act of 1989, and the
2 Structural Engineering Practice Act of 1989.

3 (30 ILCS 500/33-55 new)

4 Sec. 33-55. Prohibited conduct. No construction
5 management services contract may be awarded by a State agency
6 on a negotiated basis as provided in this Article if the
7 construction manager or an entity that controls, is controlled
8 by, or shares common ownership or control with the construction
9 manager (i) guarantees, warrants, or otherwise assumes
10 financial responsibility for the work of others on the project;
11 (ii) provides the State agency with a guaranteed maximum price
12 for the work of others on the project; or (iii) furnishes or
13 guarantees a performance or payment bond for other contractors
14 on the project. In any such case, the contract for construction
15 management services must be let by competitive bidding as in
16 the case of contracts for construction work.

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.