

AN ACT concerning procurement.

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

Section 5. The Illinois Procurement Code is amended by adding Article 33 as follows:

(30 ILCS 500/Art. 33 heading new)

ARTICLE 33. CONSTRUCTION MANAGEMENT SERVICES

(30 ILCS 500/33-5 new)

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

"Construction management services" includes:

(1) services provided in the planning and pre-construction phases of a construction project including, but not limited to, consulting with, advising, assisting, and making recommendations to the Capital Development Board and architect, engineer, or licensed land surveyor on all aspects of planning for project construction; reviewing all plans and specifications as they are being developed and making recommendations with respect to construction feasibility, availability of material and labor, time requirements for procurement and construction, and projected costs; making, reviewing, and refining budget estimates based on the Board's program and other available information; making recommendations to the Board and the architect or engineer regarding the division of work in the plans and specifications to facilitate the bidding and awarding of contracts; soliciting the interest of capable contractors and taking bids on the project; analyzing the bids received; and preparing and maintaining a progress schedule during the design phase of the project and preparation of a proposed construction schedule; and

(2) services provided in the construction phase of the

project including, but not limited to, maintaining competent supervisory staff to coordinate and provide general direction of the work and progress of the contractors on the project; directing the work as it is being performed for general conformance with working drawings and specifications; establishing procedures for coordinating among the Board, architect or engineer, contractors, and construction manager with respect to all aspects of the project and implementing those procedures; maintaining job site records and making appropriate progress reports; implementing labor policy in conformance with the requirements of the public owner; reviewing the safety and equal opportunity programs of each contractor for conformance with the public owner's policy and making recommendations; reviewing and processing all applications for payment by involved contractors and material suppliers in accordance with the terms of the contract; making recommendations and processing requests for changes in the work and maintaining records of change orders; scheduling and conducting job meetings to ensure orderly progress of the work; developing and monitoring a project progress schedule, coordinating and expediting the work of all contractors and providing periodic status reports to the owner and the architect or engineer; and establishing and maintaining a cost control system and conducting meetings to review costs.

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

"Board" means the Capital Development Board.

(30 ILCS 500/33-10 new)

Sec. 33-10. Prequalification. The Board shall establish procedures to prequalify firms seeking to provide construction

management services or may use prequalification lists from other State agencies to meet the requirements of this Section.

(30 ILCS 500/33-15 new)

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

(30 ILCS 500/33-20 new)

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

The Board shall establish a committee to select construction managers to provide construction management services. A selection committee may include at least one public member. The public member may not be employed or associated with any firm holding a contract with the Board nor may the public member's firm be considered for a contract with that Board while he or she is serving as a public member of the

committee.

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

(30 ILCS 500/33-25 new)

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

(30 ILCS 500/33-30 new)

Sec. 33-30. Contract Negotiation.

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

(b) If the Board is unable to negotiate a satisfactory contract with the firm that is highest ranked, negotiations with that firm shall be terminated. The Board shall then begin

negotiations with the firm that is next highest ranked. If the Board is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be terminated. The Board shall then begin negotiations with the firm that is next highest ranked.

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

(30 ILCS 500/33-35 new)

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

(30 ILCS 500/33-40 new)

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

(30 ILCS 500/33-45 new)

Sec. 33-45. Firm performance evaluation. The Board shall evaluate the performance of each firm upon completion of a contract. That evaluation shall be made available to the firm and the firm may submit a written response, with the evaluation and response retained solely by the Board. The evaluation and response shall not be made available to any other person or firm and is exempt from disclosure under the Freedom of

Information Act. The evaluation shall be based on the terms identified in the construction manager's contract.

(30 ILCS 500/33-50 new)

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

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

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

(1) the Prevailing Wage Act;

(2) the Public Construction Bond Act;

(3) the Public Works Employment Discrimination Act;

(4) the Public Works Preference Act;

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

(6) the Public Contract Fraud Act;

(7) the Illinois Construction Evaluation Act; and

(8) the Illinois Architecture Practice Act of 1989, the Professional Engineering Practice Act of 1989, the Illinois Professional Land Surveyor Act of 1989, and the Structural Engineering Practice Act of 1989.

(30 ILCS 500/33-55 new)

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

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