

## PREFACE TO THE 2024 EDITION

This updated edition of the *Illinois Construction Law Manual*, which replaces the 2022 Edition of this treatise, highlights and explains changes impacting the Illinois construction industry.

On December 8, 2023, Governor Pritzker certified H.B. 2878 (P.A. 103-0570), a 195-page bill originally passed by the legislature earlier in the legislative session and then subsequently approved by the legislature after modifications implemented by the Governor's amendatory veto. The Act includes numerous changes affecting the construction industry, among them changes to the Illinois Procurement Code. Perhaps the most notable change, beginning at page 172 of P.A. 103-0570, adds a restriction on retainage that may be withheld by local governments on projects for which a contractor furnishes a surety bond under the Public Construction Bond Act. 30 ILCS 550/1, *et seq.* A maximum of ten percent retainage may be withheld by a local government from a contractor who provides a surety bond, and once the contract is half complete, retainage must be reduced to five percent for the remainder of the work. The contractor and its subcontractors are subject to the same restrictions on withholding retainage from their subcontractors and sub-subcontractors. The law is effective January 1, 2024. The new restrictions on retainage for local government jobs are now almost identical to retainage restrictions on private projects which became law in 2019 under an amendment to the Contractor Prompt Payment Act. 815 ILCS 603/20.

Pursuant to an amendment to the Procurement Code (30 ILCS 500/30-30(a-5)), public institutions of higher education may continue to use single-prime procurement for projects in excess of \$250,000. For building construction projects with a total construction cost of \$20,000,000 or less, public institutions of higher education may not use the single prime delivery method for more than 50% of the total number of projects bid for each fiscal year. Projects with a total construction cost valued at \$20,000,000 or more may be bid using the single prime delivery method at the institution's discretion. The public institution of higher education may award, in each fiscal year, single prime contracts with an aggregate total value of no more than \$100,000,000. The Board of Trustees of the University of Illinois may award in each fiscal year single prime contracts with an aggregate total value of not more than \$300,000,000.

On November 30, 2023, the Illinois Supreme Court issued an important opinion in *Acuity v. M/I Homes of Chicago, LLC*, on the extent of coverage under a commercial general liability (“CGL”) insurance policy for construction defects. The issue in the case was whether the CGL policy covered construction defects which resulted in water damage to a townhome project. The Illinois Supreme Court held that such property damage is an “occurrence” and therefore potentially covered under a CGL policy. Illinois courts had previously interpreted the definitions of “property damage” and “occurrence” in most CGL policies to deny coverage for property damage to the entire construction project. Instead, coverage only extended to other real property and personal property not included in the work. In *Acuity*, the court held that unexpected and unintended physical injury to tangible property arising out of defective work is indeed an occurrence of property damage under a CGL policy. The court remanded the case to the trial court to determine whether exclusions under the policy precluded coverage.

Coverage of these changes and many more is included in this 2024 Edition of the *Illinois Construction Law Manual*.

We will continue to do our best to highlight the important changes in Illinois construction law for the benefit of our readers. We hope that this revised manual is useful to attorneys and to the construction industry. As always, we invite your comments and criticisms to help us improve the usefulness of the treatise.

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