



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2755

by Rep. Marcus C. Evans, Jr.

SYNOPSIS AS INTRODUCED:

See Index

Creates the Innovations for Transportation Infrastructure Act. Provides that the Department of Transportation may use design-build project delivery methods, Construction Manager/General Contractor project delivery methods, or Alternative Technical Concepts for design-bid-build project delivery of transportation facilities, provided that the delivery method does not exceed 20% of the Department's multi-year highway improvement program, with no one year exceeding 30%. Provides that the Illinois State Toll Highway Authority may use design-build project delivery methods, Construction Manager/General Contractor project delivery methods, or Alternative Technical Concepts for design-bid-build project delivery of transportation facilities if the facilities delivered do not exceed 20% of the Authority's annual improvement program. Places limits on the number of projects that the Department may use the various methods on. Provides that during the first phase of the two-phase procurement, the Transportation Agency (Department of Transportation or the Illinois State Toll Highway Authority) shall not consider price proposals to make its short-list decision. Provides that at least half of the evaluation committee used to assist in selecting design-build and Construction Manager/General Contractor contracts shall consist of licensed design professionals. Provides the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act does not apply to procurements under the new Act. Contains provisions concerning the procurement process and terms of design-build and construction manager-general contractor contracts. Provides that the Transportation Agency has eminent domain and quick take powers under the Act. Amends the Illinois Procurement Code and the Public Construction Bond Act. Makes conforming changes. Effective immediately.

LRB100 11099 AXK 21360 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning transportation.

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

4 Section 1. Short title. This Act may be cited as the
5 Innovations for Transportation Infrastructure Act.

6 Section 5. Legislative policy.

7 (a) It is the public policy of the State of Illinois to
8 promote the development of infrastructure projects that serve
9 the needs of the public.

10 (b) The design-build project delivery method and
11 Construction Manager/General Contractor project delivery
12 method and use of Alternative Technical Concepts have the
13 potential to capture private sector innovation and safely
14 deliver infrastructure projects on more predictable schedules
15 and budgets. Earlier completion and lower cost for projects are
16 possible with the ability to shift or share risks with the
17 private sector that are generally retained by the public in the
18 conventional design-bid-build project delivery method.

19 (c) It is the intent of the General Assembly that the
20 Department of Transportation and the Illinois State Toll
21 Highway Authority may evaluate and use Alternative Technical
22 Concepts proposed by bidders and proposers and to use the
23 design-build project delivery method and Construction

1 Manager/General Contractor project delivery method.

2 (d) It is the intent of this Act to use design
3 professionals, construction companies, and workers from this
4 State to the greatest extent possible.

5 (e) The powers granted in this Act are in addition to any
6 other powers authorized under applicable law.

7 Section 10. Definitions. As used in this Act:

8 "Alternative Technical Concepts" means a proposed
9 deviation from the contract technical requirements set forth in
10 the procurement documents for a transportation facility that
11 offers a solution that is equal or better than the requirements
12 in the procurement documents.

13 "Authority" means the Illinois State Toll Highway
14 Authority.

15 "Best value" means any selection process in which proposals
16 contain both price and qualitative components and award is
17 based upon a combination of price, qualitative concepts, and
18 other factors.

19 "Chief procurement officer" means the chief procurement
20 officer for the Transportation Agency.

21 "Construction Manager/General Contractor" means a proposer
22 that has entered into a Construction Manager/General
23 Contractor contract under this Act.

24 "Construction Manager/General Contractor contract" means
25 the two-phase contract between the Transportation Agency and a

1 Construction Manager/General Contractor, which includes a
2 first phase addressing preconstruction services and a second
3 phase addressing the construction of the transportation
4 facility.

5 "Construction Manager/General Contractor project delivery
6 method" means a method of procurement and contracting that
7 makes a Construction Manager/General Contractor who enters
8 into a contract with the Transportation Agency responsible for
9 certain preconstruction services and then, if the parties reach
10 agreement on key terms, responsible for construction of the
11 transportation facility.

12 "Department" means the Illinois Department of
13 Transportation.

14 "Design-bid-build project delivery method" means the
15 traditional method of procuring and contracting for design
16 services and construction services used separately in this
17 State, which incorporates the Architectural, Engineering, and
18 Land Surveying Qualifications Based Selection Act and the
19 principles of competitive bidding under the Illinois
20 Procurement Code.

21 "Design-build contract" means a contract between the
22 Transportation Agency and a design-builder under which the
23 design-builder agrees to furnish architectural, surveying,
24 engineering, construction, and related services for a
25 transportation facility.

26 "Design-build project delivery method" means a method of

1 procurement and contracting that provides responsibility
2 within a single contract between the Transportation Agency and
3 a design-builder for the furnishing of architectural,
4 surveying, engineering, construction, and related services for
5 a transportation facility.

6 "Design-builder" means a proposer that has entered into a
7 design-build contract with the Transportation Agency under
8 this Act.

9 "Evaluation Committee" means the committee assembled to
10 evaluate and score statements of qualifications and proposals.

11 "Evaluation criteria" means the standards and requirements
12 established by the Transportation Agency against which the
13 qualifications and proposals of a proposer will be assessed
14 during the procurement of a design-build contract or
15 Construction Manager/General Contractor contract, as
16 applicable.

17 "Executive Director" means the Executive Director of the
18 Illinois State Toll Highway Authority.

19 "Metropolitan planning organization" means a metropolitan
20 planning organization under 23 U.S.C. 134 whose metropolitan
21 planning area boundaries are partially or completely within
22 this State.

23 "Preconstruction services" means all
24 non-construction-related services that a Construction
25 Manager/General Contractor is required to perform during the
26 first phase of a Construction Manager/General Contractor

1 contract, which may include, but is not limited to, giving
2 advice to the Transportation Agency regarding scheduling, work
3 sequencing, cost engineering, constructability, cost
4 estimating, and risk identification.

5 "Proposal" means a proposer's response to a request for
6 proposals.

7 "Proposer" means any individual, sole proprietorship,
8 firm, partnership, joint venture, corporation, professional
9 corporation, or other entity legally established to conduct
10 business in this State that proposes to be the design-builder
11 or Construction Manager/General Contractor for any
12 transportation facility under this Act.

13 "Qualifications" means a statement of qualifications
14 submitted by a proposer in response to a request for
15 qualifications.

16 "Request for proposals" means the document issued by the
17 Transportation Agency to solicit proposals and describe the
18 procurement process for a design-build contract or
19 Construction Manager/General Contractor contract in accordance
20 with the design-build project delivery method or the
21 Construction Manager/General Contractor project delivery
22 method, as applicable.

23 "Request for qualifications" means the document issued by
24 the Transportation Agency in the first phase of a two-phase
25 procurement to solicit qualifications from proposers in
26 accordance with the design-build project delivery method or the

1 Construction Manager/General Contractor project delivery
2 method, as applicable.

3 "Scope and performance requirements" means the activities,
4 constructed elements, and standards of performance the
5 Transportation Agency requires the design-builder or the
6 Construction Manager/General Contractor to comply with in the
7 development of the transportation facility, which may include,
8 but is not be limited to, the intended usage, capacity, size,
9 scope, quality and performance standards, life-cycle costs,
10 preliminary engineering, design, and other requirements as
11 developed and determined by the Transportation Agency.

12 "Secretary" means the Secretary of the Illinois Department
13 of Transportation.

14 "Transportation Agency" means the Illinois Department of
15 Transportation or the Illinois State Toll Highway Authority.

16 "Transportation facility" means any new or existing
17 facility or group of facilities that are the subject of a
18 design-build contract or a Construction Manager/General
19 Contractor contract, and which may include highways, roads,
20 bridges, tunnels, overpasses, bus ways, guideways, ferries,
21 airports or other aviation facilities, public transportation
22 facilities, vehicle parking facilities, port facilities, rail
23 facilities, stations, hubs, terminals, intermodal facilities,
24 transit facilities, or similar facilities used for the
25 transportation of persons or goods, together with any
26 buildings, structures, parking areas, appurtenances,

1 intelligent transportation systems, and other property or
2 facilities related to the operation or maintenance of these
3 facilities.

4 Section 15. Authorization of project delivery methods.

5 (a) Notwithstanding any other law, and as authority
6 supplemental to its existing powers, the Transportation
7 Agency, in accordance with this Act, may use the design-build
8 project delivery method for transportation facilities,
9 provided that the capital costs for transportation facilities
10 delivered utilizing the design-build project delivery method
11 or Construction Manager/General Contractor project delivery
12 method or Alternative Technical Concepts in a design-bid-build
13 project delivery method do not: (i) for transportation
14 facilities delivered by the Department, exceed 20% of the
15 Department's multi-year highway improvement program for any
16 5-year period with no one year period exceeding 30%; or (ii)
17 for transportation facilities delivered by the Authority,
18 exceed 20% of the Authority's annual improvement program. The
19 Transportation Agency shall make this calculation prior to
20 commencing the procurement. Notwithstanding any other law, and
21 as authority supplemental to its existing power, the
22 Department, in accordance with this Act, may use the
23 Construction Manager/General Contractor project delivery
24 method for up to 2 transportation facilities. Prior to
25 commencing a procurement under this Act for either a

1 design-build contract or a Construction Manager/General
2 Contractor contract, the Transportation Agency shall first
3 undertake an analysis and make a written determination that it
4 is in the best interests of this State to utilize the selected
5 delivery method for that transportation facility. The analysis
6 and determination shall discuss the design-build project
7 delivery method or Construction Manager/General Contractor
8 project delivery method's impact on the anticipated schedule,
9 completion date, and project costs. The best interests of the
10 State analysis shall be made available to the public.

11 (b) The Transportation Agency shall report to the General
12 Assembly annually for the first 5 years after the effective
13 date of this Act on the progress of procurements and
14 transportation facilities procured under this Act.

15 (c) The Architectural, Engineering, and Land Surveying
16 Qualifications Based Selection Act shall not apply to
17 procurements under this Act.

18 Section 20. Preconditions to commencement of procurement.

19 If the Transportation Agency determines to use the
20 design-build project delivery method or the Construction
21 Manager/General Contractor project delivery method for a
22 particular transportation facility, the Transportation Agency
23 may not commence a procurement for the transportation facility
24 until the Transportation Agency has satisfied the requirements
25 of both paragraphs (1) and (2) of this Section:

1 (1) the Transportation Agency does one of the following:

2 (A) the Transportation Agency includes the
3 transportation facility in the Transportation Agency's
4 respective multi-year highway improvement program and
5 designates it as a design-build project delivery method
6 project or Construction Manager/General Contractor
7 project;

8 (B) the Transportation Agency has issued a notice of
9 intent to receive qualifications, that includes a
10 description of the proposed procurement and transportation
11 facility, at least 14 days prior to the issuance of the
12 request for qualifications, and for a Department issued
13 notice of intent shall publish the notice in the Illinois
14 Transportation Procurement Bulletin and for an Authority
15 issued notice of intent shall publish the notice in the
16 Illinois Procurement Bulletin; or

17 (C) for a single phase procurement authorized under
18 subsection (a) of Section 25 of this Act, the
19 Transportation Agency has issued a notice of intent to
20 receive proposals, that includes a description of the
21 proposed procurement and transportation facility, at least
22 14 days prior to the issuance of the request for proposals,
23 for a Department issued notice of intent shall publish the
24 notice in the Illinois Transportation Procurement Bulletin
25 and for an Authority issued notice of intent shall publish
26 the notice in the Illinois Procurement Bulletin; and

1 (2) the Transportation Agency shall use its best efforts to
2 ensure that the transportation facility is consistent with the
3 regional plan in existence at the time of any metropolitan
4 planning organization in which the boundaries of the
5 transportation facility is located, or any other
6 publicly-approved plan.

7 Section 25. Procurement process.

8 (a) The Transportation Agency may solicit a proposer with
9 which to enter into a design-build contract or Construction
10 Manager/General Contractor contract, as applicable, by using,
11 without limitation, one or more requests for qualifications,
12 short-listing of the most highly qualified proposers, requests
13 for proposals, and negotiations. The Transportation Agency
14 shall use a two-phase procurement for a design-build contract
15 to select the successful proposer; provided that the
16 Transportation Agency may use a single phase procurement if the
17 transportation facility is estimated to cost less than
18 \$5,000,000 or the Secretary or the Executive Director makes a
19 written determination that the Transportation Agency may use a
20 single phase procurement for a particular transportation
21 facility. In a two-phase procurement, the Transportation
22 Agency shall use the first phase to evaluate and short-list the
23 most highly qualified proposers based on a proposer's
24 qualifications, and then use the second phase to evaluate and
25 select a proposer based on proposals submitted by the

1 short-listed proposers. During the first phase of a two-phase
2 procurement, the Transportation Agency shall not consider
3 price proposals to make its short-list decision. In a single
4 phase procurement, the Transportation Agency shall solicit
5 proposers with a request for proposals, and shall evaluate and
6 select a proposer based on those proposals.

7 (b) The request for qualifications may contain any
8 information deemed appropriate by the Transportation Agency
9 including, without limitation, the following information:

10 (1) the anticipated scope of work for the
11 transportation facility;

12 (2) a requirement that the proposer identify certain
13 key personnel, and for design-build contracts certain key
14 firms, the experience of the personnel and firms, and the
15 conditions on which identified personnel and firms can be
16 replaced;

17 (3) the evaluation criteria for the qualifications and
18 the relative importance of those criteria; these
19 evaluation criteria may address, without limitation, the
20 proposer's technical and financial qualifications, such as
21 specialized experience, technical competence, capability
22 to perform, financial capacity, the proposer's workload,
23 local office presence, past performance, including the
24 proposer's safety record, and any other
25 qualifications-based factors;

26 (4) the Transportation Agency's prequalification,

1 licensing, and registration requirements, including any
2 requirements from the Professional Engineering Practice
3 Act of 1989, the Illinois Architecture Practice Act of
4 1989, the Structural Engineering Practice Act of 1989, and
5 the Illinois Professional Land Surveyor Act of 1989,
6 provided that nothing contained herein precludes the
7 Transportation Agency's use of additional prequalification
8 criteria or pass/fail evaluation factors addressing
9 minimum levels of technical experience or financial
10 capabilities;

11 (5) the maximum number of proposers the Transportation
12 Agency will short-list to submit proposals; and

13 (6) any other relevant information the Transportation
14 Agency deems appropriate.

15 (c) Upon completion of the qualifications evaluation, the
16 Transportation Agency shall, based on the evaluation criteria
17 set forth in the request for qualifications, create a
18 short-list of the most highly qualified proposers. The
19 Transportation Agency shall short-list no more than 5 and no
20 fewer than 2 of the most highly qualified proposers.
21 Notwithstanding other provisions of this subsection (c), the
22 Transportation Agency may short-list fewer than 2 proposers if
23 the Secretary or the Executive Director make a finding that an
24 emergency situation justifies the limited short-listing and
25 fewer than 2 proposers meet any applicable prequalification or
26 pass/fail requirements set forth in the request for

1 qualifications.

2 (d) The request for proposals may contain any information
3 deemed appropriate by the Transportation Agency including,
4 without limitation, the following information:

5 (1) the form and amount of required bid security;

6 (2) the terms of the design-build contract or
7 Construction Manager/General Contractor contract
8 including, but not limited to, scope and performance
9 requirements, schedule or completion date requirements,
10 subcontractor requirements, payment and performance
11 security requirements, and insurance requirements;

12 (3) the requirements for the technical component of the
13 proposal, including a description of the level of design,
14 scope and type of renderings, drawings, and specifications
15 to be provided in the proposals;

16 (4) the requirements for the price component of the
17 proposal, which for Construction Manager/General
18 Contractor contracts may include a requirement for the
19 proposer to submit a lump sum price for the direct costs to
20 perform the required preconstruction services and
21 percentage mark-up on those direct costs;

22 (5) the evaluation criteria for the proposals,
23 including technical criteria, innovation, and schedule,
24 and the relative importance of those criteria, as the
25 Transportation Agency deems appropriate;

26 (6) a process for the Transportation Agency to review

1 and accept Alternative Technical Concepts;

2 (7) requirements regarding the proposer's
3 qualifications; and

4 (8) any other relevant information the Transportation
5 Agency deems appropriate.

6 (e) Prior to the proposers' submittal of proposals, the
7 Transportation Agency may conduct confidential meetings and
8 exchange confidential information with proposers to promote
9 understanding of the request for proposals, review Alternative
10 Technical Concepts, or discuss other issues related to the
11 procurement.

12 (f) The date proposals are due must be at least 28 calendar
13 days after the date the Transportation Agency first issues the
14 request for proposals.

15 (g) The Transportation Agency may offer to pay a stipend in
16 an amount and on the terms and conditions determined by the
17 Transportation Agency and as set forth in the request for
18 proposals to: (1) all short-listed proposers if the
19 Transportation Agency cancels the procurement before the due
20 date for proposals; or (2) each unsuccessful proposer that
21 submits a responsive proposal. The Transportation Agency may
22 pay a stipend only to those proposers who grant to the
23 Transportation Agency the right to use any work product
24 contained in the unsuccessful proposer's proposal and other
25 proposal-related submissions or, if the Transportation Agency
26 cancels the procurement before the due date for proposals, any

1 work product developed prior to cancellation, including
2 technologies, techniques, methods, processes, and information
3 contained in the recipient's design for the transportation
4 facility.

5 (h) The Transportation Agency shall, as appropriate
6 depending on whether the transportation facility includes
7 building facilities, directly employ or retain a professional
8 engineer or engineers licensed in this State or a licensed
9 architect or architects, or both engineers licensed in this
10 State and licensed architects, to prepare the scope and assist
11 in the evaluation of the proposals' technical submissions under
12 a design-build project delivery method. The professional
13 engineers and licensed architects performing these services
14 are generally precluded from participating in the procurement
15 of the transportation facility at issue as a member of a
16 proposer team.

17 (i) The Transportation Agency shall have the right to
18 reject any and all qualifications or proposals, including, but
19 not limited to, the right to reject any qualifications or
20 proposals as non-responsive if, in the Transportation Agency's
21 sole discretion, the qualifications or proposals do not meet
22 all material requirements of the request for qualifications or
23 request for proposals, as appropriate. The Transportation
24 Agency shall not consider a proposal that does not include:

25 (1) the proposer's plan to comply with requirements
26 established by the Transportation Agency regarding

1 utilization of business enterprises, including
2 disadvantaged business enterprises; or

3 (2) bid security in the form and amount designated in
4 the request for proposals.

5 (j) The Transportation Agency shall consult with the
6 appropriate chief procurement officer on the design-build
7 project delivery method and the Construction Manager/General
8 Contractor project delivery method procurement processes, and
9 the Secretary or the Executive Director, in consultation with
10 the chief procurement officer, shall determine which
11 procedures to adopt and apply to the design-build project
12 delivery method and Construction Manager/General Contractor
13 project delivery method procurement processes in order to
14 ensure an open, transparent, and efficient process that
15 accomplishes the purposes of this Act.

16 Section 30. Evaluation committee.

17 (a) The Transportation Agency shall establish one or more
18 evaluation committees to assist in selecting a design-builder
19 and a Construction Manager/General Contractor. The
20 Transportation Agency shall, in its sole discretion, determine
21 the appropriate size and composition of the evaluation
22 committee, provided that at least half of the committee must be
23 licensed design professionals.

24 (b) The Transportation Agency may establish an evaluation
25 committee for a set term or for the procurement of a particular

1 transportation facility.

2 (c) Once the Transportation Agency identifies the
3 proposers for a transportation facility, each member of an
4 evaluation committee must certify that no conflict of interest
5 exists between the member and the proposers. If the
6 Transportation Agency, after consultation with the chief
7 procurement officer, determines that an actual conflict
8 exists, the member shall not participate on the evaluation
9 committee for that procurement and the Transportation Agency
10 shall appoint a replacement member on either a permanent or
11 temporary basis.

12 Section 35. Procedures for selection. The Transportation
13 Agency shall review, evaluate, score, and rank proposals and
14 determine which proposal offers the best value to the public
15 based on the evaluation criteria set forth in the request for
16 proposals. The Transportation Agency shall award the contract
17 based on this determination. Notwithstanding other provisions
18 of this Section, if for any reason the proposer awarded the
19 contract is unable or unwilling to execute the contract,
20 including the failure of the proposer and the Transportation
21 Agency to successfully complete negotiations, if any, of the
22 contract, the Transportation Agency may award the contract to
23 the proposer whose proposal the Transportation Agency
24 determines offers the public the next best value.

1 Section 40. Project records; confidentiality; public
2 disclosure.

3 (a) The Transportation Agency shall maintain all written
4 decisions, qualification and proposal evaluations, scoring
5 documents, selection evaluations, proposals, and procurement
6 documents in a procurement file maintained by the
7 Transportation Agency.

8 (b) A proposer may identify those portions of a proposal or
9 other submission that the proposer considers to be trade
10 secrets or confidential, commercial, financial, or proprietary
11 information. To consider confidential and proprietary
12 information, including trade secrets, to be exempt from
13 disclosure, the proposer shall do all of the following:

14 (1) request exclusion from disclosure upon submission
15 of the information or other materials for which protection
16 is sought;

17 (2) identify the data or other materials for which
18 protection is sought;

19 (3) state the statutory or regulatory basis for the
20 protection;

21 (4) fully comply with the federal Freedom of
22 Information Act and any other applicable provisions of
23 State law, including, but not limited to, the Freedom of
24 Information Act, with respect to information the proposer
25 contends should be exempt from disclosure; and

26 (5) certify if the information is in accordance with

1 the protection of the Illinois Trade Secrets Act.

2 (c) Notwithstanding any other provision of law, in order to
3 properly balance the need to maximize competition under this
4 Act with the need to create a transparent procurement process,
5 the qualifications, proposals, and other information and
6 documents submitted by proposers and the Transportation
7 Agency's evaluation records shall not be subject to release or
8 disclosure by the Transportation Agency until execution of the
9 design-build contract or Construction Manager/General
10 Contractor contract, as applicable. If the Transportation
11 Agency terminates the procurement for a transportation
12 facility, the exemption from release or disclosure under this
13 Section shall remain in place until the Transportation Agency
14 re-procures the transportation facility and has entered into a
15 design-build contract or Construction Manager/General
16 Contractor contract, as applicable. However, this exemption
17 shall lapse if the Transportation Agency does not commence the
18 re-procurement of the transportation facility within 5 years of
19 the termination.

20 Section 45. Design-build contract. A design-build contract
21 may include any provisions the Transportation Agency
22 determines are necessary or appropriate, including, but not
23 limited to, provisions regarding the following:

- 24 (1) compensation or payments to the design-builder;
- 25 (2) grounds for termination of the design-build

1 contract, including the Transportation Agency's right to
2 terminate for convenience;

3 (3) liability for damages and nonperformance;

4 (4) events of default and the rights and remedies
5 available to the design-builder and the Transportation
6 Agency in the event of a default or delay;

7 (5) the identification of any technical specifications
8 that the design-builder must comply with when developing
9 plans or performing construction work;

10 (6) the procedures for review and approval of the
11 design-builder's plans;

12 (7) required performance and payment security;

13 (8) the terms and conditions of indemnification and
14 minimum insurance requirements; and

15 (9) any other terms and conditions the Transportation
16 Agency deems necessary.

17 Section 50. Construction Manager/General Contractor
18 contract.

19 (a) The Construction Manager/General Contractor contract
20 shall divide the Construction Manager/General Contractor
21 services into 2 phases. The first phase shall address
22 preconstruction services and the procedures the parties shall
23 follow to finalize the contract terms for the second phase. The
24 second phase shall address the Construction Manager/General
25 Contractor's construction of the transportation facility for a

1 lump sum or a guaranteed maximum price.

2 (b) A Construction Manager/General Contractor contract
3 shall include provisions regarding the following:

4 (1) the Construction Manager/General Contractor's
5 provision of preconstruction services during the first
6 phase of the contract, including the Construction
7 Manager/General Contractor's compensation for those
8 services;

9 (2) a requirement that, during the first phase of the
10 contract, the Construction Manager/General Contractor
11 shall use a competitive bidding process to procure
12 subcontracts for at least the minimum percentage of
13 construction work specified in the request for proposals,
14 provided that:

15 (A) compliance with this requirement shall be
16 based on an estimated cost for the construction work
17 approved by the Transportation Agency prior to the
18 start of the competitive bidding process; and

19 (B) the Construction Manager/General Contractor
20 may not use subcontracts with its wholly or partially
21 owned subsidiaries, parent companies, or affiliates to
22 satisfy this obligation;

23 (3) the process the Transportation Agency and the
24 Construction Manager/General Contractor shall use to
25 determine a lump sum or guaranteed maximum price for the
26 construction work, which shall include a requirement that

1 the Transportation Agency conduct an independent cost
2 estimate for the construction work; and

3 (4) grounds for termination of the Construction
4 Manager/General Contractor contract, including the
5 Transportation Agency's right to terminate the contract
6 and not proceed with the construction phase of the project
7 if the Transportation Agency and the Construction
8 Manager/General Contractor are unable to negotiate a lump
9 sum or guaranteed maximum price for the construction work.

10 (c) In addition to the provisions under subsection (b) of
11 this Section, a Construction Manager/General Contractor
12 contract may include any other provisions the Transportation
13 Agency determines are necessary or appropriate, including, but
14 not limited to, provisions regarding the following:

15 (1) liability for damages and nonperformance;

16 (2) events of default and the rights and remedies
17 available to the Construction Manager/General Contractor
18 and the Transportation Agency in the event of a default or
19 delay;

20 (3) the identification of any technical specifications
21 that the Construction Manager/General Contractor must
22 comply with when aiding the Transportation Agency with
23 developing plans or performing construction work;

24 (4) required performance and payment security for the
25 construction phase of the contract;

26 (5) the terms and conditions of indemnification and

1 minimum insurance requirements; and

2 (6) any other terms and conditions the Transportation
3 Agency deems necessary.

4 (d) If the Construction Manager/General Contractor
5 contract is terminated for any reason, the Transportation
6 Agency may, in its sole discretion, re-advertise the
7 Construction Manager/General Contractor contract under this
8 Act or use any other authorized procurement method to complete
9 the transportation facility or any portion of the
10 transportation facility. Once the contract is terminated, the
11 Transportation Agency may use any work product developed by the
12 Construction Manager/General Contractor to complete the
13 transportation facility.

14 Section 55. Funding and financing.

15 (a) The Transportation Agency may utilize any lawful source
16 of funding and financing to compensate a design-builder and
17 Construction Manager/General Contractor for work and services
18 performed under a design-build contract or Construction
19 Manager/General Contractor contract, as applicable, and the
20 Transportation Agency may combine federal, State, local, and
21 private funds to finance a transportation facility.

22 (b) Subject to appropriation by the General Assembly of the
23 required amounts, the Transportation Agency may obligate and
24 make expenditures of funds as and when needed to satisfy its
25 payment obligations under a design-build contract or

1 Construction Manager/General Contractor contract.

2 Section 56. Utilization requirements. Design-builder and
3 Construction Manager/General Contractor projects shall comply
4 with Section 2-105 of the Illinois Human Rights Act and all
5 applicable laws and rules that establish standards and
6 procedures for the utilization of minority, disadvantaged, and
7 female-owned businesses, including, but not limited to, the
8 Business Enterprise for Minorities, Females, and Persons with
9 Disabilities Act.

10 Section 60. Acquisition of property and related
11 agreements. The Transportation Agency may exercise any and all
12 powers of condemnation or eminent domain, including quick-take
13 powers, to acquire lands or estates or interests in land for a
14 transportation facility under this Act to the extent the
15 Transportation Agency finds that the action serves the public
16 purpose of this Act and deems the action appropriate in the
17 exercise of its powers under this Act. In addition, the
18 Transportation Agency and a design-builder or Construction
19 Manager/General Contractor may enter into leases, licenses,
20 easements, and other grants of property interests that the
21 Transportation Agency determines are necessary to deliver a
22 transportation facility under this Act.

23 Section 65. Federal requirements. In the procurement of

1 design-build contracts and Construction Manager/General
2 Contractor contracts, the Transportation Agency shall, to the
3 extent applicable, comply with federal law and regulations and
4 take all necessary steps to adapt its rules, policies, and
5 procedures to remain eligible for federal aid.

6 Section 70. Powers. The powers granted to the
7 Transportation Agency under this Act, including the power to
8 procure and enter into design-build contracts and Construction
9 Manager/General Contractor contracts, shall be liberally
10 construed to accomplish its purpose, are in addition to any
11 existing powers of the Transportation Agency, and shall not
12 affect or impair any other powers authorized under applicable
13 law.

14 Section 75. Rulemaking.

15 (a) The Illinois Administrative Procedure Act applies to
16 all administrative rules and procedures of the Transportation
17 Agency under this Act, except that nothing in this Act shall be
18 construed to render any prequalification or other
19 responsibility criteria as a "license" or "licensing" under
20 that Act.

21 (b) The appropriate chief procurement officer, in
22 consultation with the Transportation Agency, may adopt rules to
23 carry out the provisions of this Act.

1 Section 905. The Department of Transportation Law of the
2 Civil Administrative Code of Illinois is amended by adding
3 Section 2705-233 as follows:

4 (20 ILCS 2705/2705-233 new)

5 Sec. 2705-233. Design-build and Construction
6 Manager/General Contractor for the transportation
7 infrastructure. The Department may exercise all powers granted
8 to it under the Innovations for Transportation Infrastructure
9 Act, including, but not limited to, the power to enter into all
10 contracts or agreements necessary or incidental to the
11 performance of its powers under that Act, and powers related to
12 any transportation facility implemented under that Act.

13 Section 910. The Illinois Finance Authority Act is amended
14 by adding Section 825-108 as follows:

15 (20 ILCS 3501/825-108 new)

16 Sec. 825-108. Transportation project financing. For the
17 purpose of financing a transportation facility undertaken
18 under the Innovations for Transportation Infrastructure Act,
19 the Authority may apply for an allocation of tax-exempt bond
20 financing authorization provided by subsection (m) of Section
21 142 of the United States Internal Revenue Code, as well as
22 financing available under any other federal law or program.

1 Section 915. The Illinois Procurement Code is amended by
2 adding Section 1-10.5 as follows:

3 (30 ILCS 500/1-10.5 new)

4 Sec. 1-10.5. Alternative Technical Concepts.

5 (a) For the purposes of this Section, "Alternative
6 Technical Concepts" and "design-bid-build project delivery
7 method" have the meanings ascribed to those terms in the
8 Innovations for Transportation Infrastructure Act.

9 (b) Notwithstanding subsection (b) of Section 1-10 of this
10 Code, the Department of Transportation may allow bidders and
11 proposers to submit Alternative Technical Concepts in their
12 bids and proposals, provided the Department determines that the
13 Alternative Technical Concepts provide an equal or better
14 solution than the underlying technical requirements applicable
15 to the work. Notwithstanding the foregoing, for projects the
16 Department delivers using the design-bid-build project
17 delivery method, the Department shall only use the Alternative
18 Technical Concepts process for no more than 3 projects. If the
19 Department allows bidders or proposers for a particular
20 contract to submit Alternative Technical Concepts, the
21 Department shall describe the process for submission and
22 evaluation of Alternative Technical Concepts in the
23 procurement documents for that contract, including the
24 potential use of confidential meetings and the exchange of
25 confidential information with bidders and proposers to review

1 and discuss potential or proposed Alternative Technical
2 Concepts.

3 Section 920. The Public Construction Bond Act is amended by
4 adding Section 1.9 as follows:

5 (30 ILCS 550/1.9 new)

6 Sec. 1.9. Design-build contracts and Construction
7 Manager/General Contractor contracts. This Act applies to any
8 design-build contract or Construction Manager/General
9 Contractor contract entered into under the Innovations for
10 Transportation Infrastructure Act.

11 Section 925. The Employment of Illinois Workers on Public
12 Works Act is amended by adding Section 2.8 as follows:

13 (30 ILCS 570/2.8 new)

14 Sec. 2.8. Design build and Construction Manager/General
15 Contractor contracts. This Act applies to any design build
16 contracts and Construction Manager/General Contractor
17 contracts entered into under the Innovations for
18 Transportation Infrastructure Act.

19 Section 930. The Business Enterprise for Minorities,
20 Females, and Persons with Disabilities Act is amended by adding
21 Section 2.8 as follows:

1 (30 ILCS 575/2.8 new)

2 Sec. 2.8. Design build and Construction Manager/General
3 Contractor contracts. This Act applies to any design-build
4 contracts and Construction Manager/General Contractor
5 contracts entered into under the Innovations for
6 Transportation Infrastructure Act.

7 Section 935. The Toll Highway Act is amended by adding
8 Section 11.2 as follows:

9 (605 ILCS 10/11.2 new)

10 Sec. 11.2. Design-build and Construction Manager/General
11 Contractor contracts. The Authority may exercise all powers
12 granted to it under the Innovations for Transportation
13 Infrastructure Act, including, but not limited to, the power to
14 enter into all contracts or agreements necessary to perform its
15 powers under that Act, and any powers related to a
16 transportation facility implemented under that Act.

17 Section 940. The Eminent Domain Act is amended by adding
18 Section 15-5-48 as follows:

19 (735 ILCS 30/15-5-48 new)

20 Sec. 15-5-48. Eminent domain powers in new Acts. The
21 following provisions of law may include express grants of the

1 power to acquire property by condemnation or eminent domain:

2 The Innovations for Transportation Infrastructure Act; for
3 the purposes of constructing a transportation facility under
4 the Act.

5 Section 945. The Prevailing Wage Act is amended by changing
6 Section 2 as follows:

7 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

8 Sec. 2. This Act applies to the wages of laborers,
9 mechanics and other workers employed in any public works, as
10 hereinafter defined, by any public body and to anyone under
11 contracts for public works. This includes any maintenance,
12 repair, assembly, or disassembly work performed on equipment
13 whether owned, leased, or rented.

14 As used in this Act, unless the context indicates
15 otherwise:

16 "Public works" means all fixed works constructed or
17 demolished by any public body, or paid for wholly or in part
18 out of public funds. "Public works" as defined herein includes
19 all projects financed in whole or in part with bonds, grants,
20 loans, or other funds made available by or through the State or
21 any of its political subdivisions, including but not limited
22 to: bonds issued under the Industrial Project Revenue Bond Act
23 (Article 11, Division 74 of the Illinois Municipal Code), the
24 Industrial Building Revenue Bond Act, the Illinois Finance

1 Authority Act, the Illinois Sports Facilities Authority Act, or
2 the Build Illinois Bond Act; loans or other funds made
3 available pursuant to the Build Illinois Act; loans or other
4 funds made available pursuant to the Riverfront Development
5 Fund under Section 10-15 of the River Edge Redevelopment Zone
6 Act; or funds from the Fund for Illinois' Future under Section
7 6z-47 of the State Finance Act, funds for school construction
8 under Section 5 of the General Obligation Bond Act, funds
9 authorized under Section 3 of the School Construction Bond Act,
10 funds for school infrastructure under Section 6z-45 of the
11 State Finance Act, and funds for transportation purposes under
12 Section 4 of the General Obligation Bond Act. "Public works"
13 also includes (i) all projects financed in whole or in part
14 with funds from the Department of Commerce and Economic
15 Opportunity under the Illinois Renewable Fuels Development
16 Program Act for which there is no project labor agreement; (ii)
17 all work performed pursuant to a public private agreement under
18 the Public Private Agreements for the Illiana Expressway Act or
19 the Public-Private Agreements for the South Suburban Airport
20 Act; ~~and~~ (iii) all projects undertaken under a public-private
21 agreement under the Public-Private Partnerships for
22 Transportation Act; and (iv) all transportation facilities
23 undertaken under a design-build contract or a Construction
24 Manager/General Contractor contract under the Innovations for
25 Transportation Infrastructure Act. "Public works" also
26 includes all projects at leased facility property used for

1 airport purposes under Section 35 of the Local Government
2 Facility Lease Act. "Public works" also includes the
3 construction of a new wind power facility by a business
4 designated as a High Impact Business under Section 5.5(a)(3)(E)
5 of the Illinois Enterprise Zone Act. "Public works" does not
6 include work done directly by any public utility company,
7 whether or not done under public supervision or direction, or
8 paid for wholly or in part out of public funds. "Public works"
9 also includes any corrective action performed pursuant to Title
10 XVI of the Environmental Protection Act for which payment from
11 the Underground Storage Tank Fund is requested. "Public works"
12 does not include projects undertaken by the owner at an
13 owner-occupied single-family residence or at an owner-occupied
14 unit of a multi-family residence. "Public works" does not
15 include work performed for soil and water conservation purposes
16 on agricultural lands, whether or not done under public
17 supervision or paid for wholly or in part out of public funds,
18 done directly by an owner or person who has legal control of
19 those lands.

20 "Construction" means all work on public works involving
21 laborers, workers or mechanics. This includes any maintenance,
22 repair, assembly, or disassembly work performed on equipment
23 whether owned, leased, or rented.

24 "Locality" means the county where the physical work upon
25 public works is performed, except (1) that if there is not
26 available in the county a sufficient number of competent

1 skilled laborers, workers and mechanics to construct the public
2 works efficiently and properly, "locality" includes any other
3 county nearest the one in which the work or construction is to
4 be performed and from which such persons may be obtained in
5 sufficient numbers to perform the work and (2) that, with
6 respect to contracts for highway work with the Department of
7 Transportation of this State, "locality" may at the discretion
8 of the Secretary of the Department of Transportation be
9 construed to include two or more adjacent counties from which
10 workers may be accessible for work on such construction.

11 "Public body" means the State or any officer, board or
12 commission of the State or any political subdivision or
13 department thereof, or any institution supported in whole or in
14 part by public funds, and includes every county, city, town,
15 village, township, school district, irrigation, utility,
16 reclamation improvement or other district and every other
17 political subdivision, district or municipality of the state
18 whether such political subdivision, municipality or district
19 operates under a special charter or not.

20 The terms "general prevailing rate of hourly wages",
21 "general prevailing rate of wages" or "prevailing rate of
22 wages" when used in this Act mean the hourly cash wages plus
23 annualized fringe benefits for training and apprenticeship
24 programs approved by the U.S. Department of Labor, Bureau of
25 Apprenticeship and Training, health and welfare, insurance,
26 vacations and pensions paid generally, in the locality in which

1 the work is being performed, to employees engaged in work of a
2 similar character on public works.

3 (Source: P.A. 97-502, eff. 8-23-11; 98-109, eff. 7-25-13;
4 98-482, eff. 1-1-14; 98-740, eff. 7-16-14; 98-756, eff.
5 7-16-14.)

6 Section 997. Severability. The provisions of this Act are
7 severable under Section 1.31 of the Statute on Statutes.

8 Section 999. Effective date. This Act takes effect upon
9 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 20 ILCS 2705/2705-233 new

5 20 ILCS 3501/825-108 new

6 30 ILCS 500/1-10.5 new

7 30 ILCS 550/1.9 new

8 30 ILCS 570/2.8 new

9 30 ILCS 575/2.8 new

10 605 ILCS 10/11.2 new

11 735 ILCS 30/15-5-48 new

12 820 ILCS 130/2 from Ch. 48, par. 39s-2