



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2905

Introduced 5/25/2021, by Sen. Ram Villivalam

SYNOPSIS AS INTRODUCED:

New Act

20 ILCS 2705/2705-233 new

20 ILCS 3501/825-108 new

30 ILCS 500/1-10.5 new

30 ILCS 550/1.9 new

30 ILCS 570/2.8 new

30 ILCS 575/2.8 new

605 ILCS 10/11.2 new

735 ILCS 30/15-5-48 new

820 ILCS 130/2

from Ch. 48, par. 39s-2

Creates the Innovations for Transportation Infrastructure Act. Contains a statement of legislative policy. Defines terms. Adds provisions governing: authorization of project delivery methods; preconditions to commencement of procurement; procurement; evaluation and selection of proposals; project records; confidentiality; public disclosure; design-build contracts; construction manager/general contractor contracts; funding and financing; minority, disadvantaged, and women-owned businesses; labor agreements; acquisition of property; federal requirements; powers of the Department of Transportation and the Illinois State Toll Highway Authority; and rulemaking. Makes corresponding changes in the Department of Transportation Law of the Civil Administrative Code of Illinois; Illinois Finance Authority Act; the Illinois Procurement Code; the Public Construction Bond Act; the Employment of Illinois Workers on Public Works Act; the Business Enterprise for Minorities, Women, and Persons with Disabilities Act; the Toll Highway Act; the Eminent Domain Act; and the Prevailing Wage Act. Provides that the provisions of the Act are severable. Effective immediately.

LRB102 18491 RAM 26644 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
16 are possible with the ability to shift or share risks with the
17 private sector that are generally retained by the public in
18 the 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, reflecting the diversity of the State's businesses and
5 workforce, to the greatest extent possible.

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

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

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

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

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

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

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

25 "Construction Manager/General Contractor contract" means a

1 two-phase contract between the Transportation Agency and a
2 Construction Manager/General Contractor that includes a first
3 phase addressing preconstruction services and a second phase
4 addressing the construction of the transportation 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
10 reach agreement on key terms, responsible for construction of
11 the 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 that 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, and 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

1 the 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, and may include,
8 but is not 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 includes highways, roads, bridges,
20 tunnels, overpasses, bus ways, guideways, ferries, airports or
21 other aviation facilities, public transportation facilities,
22 vehicle parking facilities, port facilities, rail facilities,
23 stations, hubs, terminals, intermodal facilities, transit
24 facilities, or similar facilities used for the transportation
25 of persons or goods, together with any buildings, structures,
26 parking areas, appurtenances, intelligent transportation

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

3 Section 15. Authorization of project delivery methods.

4 (a) Notwithstanding any other law, and as authority
5 supplemental to its existing powers, the Transportation
6 Agency, in accordance with this Act, may use the design-build
7 project delivery method for transportation facilities if the
8 capital costs for transportation facilities delivered
9 utilizing the design-build project delivery method or
10 Construction Manager/General Contractor project delivery
11 method or Alternative Technical Concepts in a design-bid-build
12 project delivery method do not: (i) for transportation
13 facilities delivered by the Department, exceed \$400 million of
14 the Department's multi-year highway improvement program for
15 any 5-year period with no one year period exceeding \$125
16 million; or (ii) for transportation facilities delivered by
17 the Authority, exceed 20% of the Authority's annual
18 improvement program. The Transportation Agency shall make this
19 calculation before commencing the procurement. Notwithstanding
20 any other law, and as authority supplemental to its existing
21 powers, the Department, in accordance with this Act, may use
22 the Construction Manager/General Contractor project delivery
23 method for up to 2 transportation facilities. Before
24 commencing a procurement under this Act for either a
25 design-build contract or a Construction Manager/General

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

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

14 Section 20. Preconditions to commencement of procurement.

15 If the Transportation Agency determines to use the
16 design-build project delivery method or the Construction
17 Manager/General Contractor project delivery method for a
18 particular transportation facility, the Transportation Agency
19 may not commence a procurement for the transportation facility
20 until the Transportation Agency has satisfied the following
21 requirements:

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

23 (A) the Transportation Agency includes the
24 transportation facility in the Transportation Agency's
25 respective multi-year highway improvement program and

1 designates it as a design-build project delivery method
2 project or Construction Manager/General Contractor
3 project;

4 (B) the Transportation Agency issues a notice of
5 intent to receive qualifications, that includes a
6 description of the proposed procurement and transportation
7 facility, at least 28 days before the issuance of the
8 request for qualifications, and for a Department-issued
9 notice of intent publishes the notice in the Illinois
10 Transportation Procurement Bulletin and for an
11 Authority-issued notice of intent publishes the notice in
12 the Illinois Procurement Bulletin; or

13 (C) for a single-phase procurement authorized under
14 subsection (a) of Section 25 of this Act, the
15 Transportation Agency issues a notice of intent to receive
16 proposals, that includes a description of the proposed
17 procurement and transportation facility, at least 14 days
18 before the issuance of the request for proposals, and for
19 a Department-issued notice of intent publishes the notice
20 in the Illinois Transportation Procurement Bulletin and
21 for an Authority-issued notice of intent publishes the
22 notice in the Illinois Procurement Bulletin; and

23 (2) the Transportation Agency uses its best efforts to
24 ensure that the transportation facility is consistent with the
25 regional plan in existence at the time of any metropolitan
26 planning organization in which the boundaries of the

1 transportation facility is located, or any other
2 publicly-approved plan.

3 Section 25. Procurement process.

4 (a) The Transportation Agency may solicit a proposer with
5 which to enter into a design-build contract or Construction
6 Manager/General Contractor contract, as applicable, by using,
7 without limitation, one or more requests for qualifications, a
8 shortlisting of the most highly qualified proposers, requests
9 for proposals, and negotiations. The Transportation Agency
10 shall use a two-phase procurement for a design-build contract
11 to select the successful proposer, except that the
12 Transportation Agency may use a single-phase procurement if
13 the transportation facility is estimated to cost less than
14 \$5,000,000 or the Secretary or the Executive Director makes a
15 written determination that the Transportation Agency may use a
16 single-phase procurement for a particular transportation
17 facility. In a two-phase procurement, the Transportation
18 Agency shall use the first phase to evaluate and shortlist the
19 most highly qualified proposers based on a proposer's
20 qualifications, and then use the second phase to evaluate and
21 select a proposer based on proposals submitted by the
22 shortlisted proposers. During the first phase of a two-phase
23 procurement, the Transportation Agency shall not consider
24 price proposals to make its shortlist decision. In a
25 single-phase procurement, the Transportation Agency shall

1 solicit proposers with a request for proposals, and shall
2 evaluate and select a proposer based on those proposals.

3 (b) The request for qualifications may contain any terms
4 deemed appropriate by the Transportation Agency including,
5 without limitation, the following:

6 (1) a description of the anticipated scope of work for
7 the transportation facility;

8 (2) a requirement that the proposer identify certain
9 key personnel, and for design-build contracts certain key
10 firms, the experience of the personnel and firms, and the
11 conditions on which identified personnel and firms can be
12 replaced;

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

23 (4) the Transportation Agency's prequalification,
24 licensing, and registration requirements, including any
25 requirements from the Professional Engineering Practice
26 Act of 1989, the Illinois Architecture Practice Act of

1 1989, the Structural Engineering Practice Act of 1989, and
2 the Illinois Professional Land Surveyor Act of 1989,
3 except that nothing contained herein precludes the
4 Transportation Agency's use of additional prequalification
5 criteria or pass-fail evaluation factors addressing
6 minimum levels of technical experience or financial
7 capabilities;

8 (5) a requirement that the proposer provide references
9 or contact information for persons who can attest to the
10 past performance of the proposer, including with respect
11 to successful project delivery, subcontracting, labor
12 relations, diverse business utilization, workforce
13 diversity, and compliance with contract requirements;

14 (6) the maximum number of proposers the Transportation
15 Agency will shortlist to submit proposals; and

16 (7) any other relevant information the Transportation
17 Agency deems appropriate.

18 (c) Upon completion of the qualifications evaluation, the
19 Transportation Agency shall, based on the evaluation criteria
20 set forth in the request for qualifications, create a
21 shortlist of the most highly qualified proposers. The
22 Transportation Agency shall shortlist no more than 5 and no
23 fewer than 2 of the most highly qualified proposers.
24 Notwithstanding other provisions of this subsection (c), the
25 Transportation Agency may shortlist fewer than 2 proposers if
26 the Secretary or the Executive Director makes a finding that

1 an emergency situation justifies the limited shortlisting and
2 fewer than 2 proposers meet any applicable prequalification or
3 pass-fail requirements set forth in the request for
4 qualifications.

5 (d) The request for proposals may contain any terms deemed
6 appropriate by the Transportation Agency including, without
7 limitation, the following:

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

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

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

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

25 (5) the evaluation criteria for the proposals,
26 including technical criteria, innovation, and schedule,

1 and the relative importance of those criteria, as the
2 Transportation Agency deems appropriate;

3 (6) a process for the Transportation Agency to review
4 and accept Alternative Technical Concepts;

5 (7) requirements regarding utilization of business
6 enterprises, including disadvantaged business
7 enterprises, and workforce development, including a
8 description of utilization and workforce diversity plans
9 and certifications to be provided in the proposals;

10 (8) requirements regarding the proposer's
11 qualifications; and

12 (9) any other relevant information the Transportation
13 Agency deems appropriate.

14 (e) Before the proposers' submittal of proposals, the
15 Transportation Agency may conduct confidential meetings and
16 exchange confidential information with proposers to promote
17 understanding of the request for proposals, review Alternative
18 Technical Concepts, or discuss other issues related to the
19 procurement.

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

23 (g) The Transportation Agency may offer to pay a stipend
24 in an amount and on the terms and conditions determined by the
25 Transportation Agency and as set forth in the request for
26 proposals to: (1) all shortlisted proposers if the

1 Transportation Agency cancels the procurement before the due
2 date for proposals; or (2) each unsuccessful proposer that
3 submits a responsive proposal; or (3) each member of the
4 proposer team that incurs costs in the preparation of the
5 proposal. The Transportation Agency may pay a stipend only to
6 those proposers who grant to the Transportation Agency the
7 right to use any work product contained in the unsuccessful
8 proposer's proposal and other proposal-related submissions or,
9 if the Transportation Agency cancels the procurement before
10 the due date for proposals, any work product developed before
11 cancellation, including technologies, techniques, methods,
12 processes, and information contained in the recipient's design
13 for the transportation facility.

14 (h) The Transportation Agency shall, as appropriate
15 depending on whether the transportation facility includes
16 building facilities, directly employ or retain a professional
17 engineer or engineers licensed in this State or a licensed
18 architect or architects, or both engineers licensed in this
19 State and licensed architects, to prepare the scope and assist
20 in the evaluation of the proposals' technical submissions
21 under a design-build project delivery method. The professional
22 engineers and licensed architects performing these services
23 are generally precluded from participating in the procurement
24 of the transportation facility at issue as a member of a
25 proposer team.

26 (i) The Transportation Agency has the right to reject any

1 and all qualifications or proposals, including, but not
2 limited to, the right to reject any qualifications or
3 proposals as non-responsive, if, in the Transportation
4 Agency's sole discretion, the qualifications or proposals do
5 not meet all material requirements of the request for
6 qualifications or request for proposals, as appropriate. The
7 Transportation Agency shall not consider a proposal that does
8 not include:

9 (1) the proposer's plan to comply with requirements
10 established by the Transportation Agency regarding
11 utilization of business enterprises, including
12 disadvantaged business enterprises; or

13 (2) bid security in the form and amount designated in
14 the request for proposals.

15 (j) The Transportation Agency shall consult with the
16 appropriate chief procurement officer on the design-build
17 project delivery method and the Construction Manager/General
18 Contractor project delivery method procurement processes, and
19 the Secretary or the Executive Director, in consultation with
20 the chief procurement officer, shall determine which
21 procedures to adopt and apply to the design-build project
22 delivery method and Construction Manager/General Contractor
23 project delivery method procurement processes in order to
24 ensure an open, transparent, and efficient process that
25 accomplishes the purposes of this Act.

26 (k) To ensure taxpayer accountability, the Transportation

1 Agency shall independently procure an owner's representative
2 or construction manager to provide design reviews,
3 constructability reviews, value engineering, construction
4 acceptance, oversight of utility relocations, stakeholder
5 coordination, independent quality assurance surveys,
6 independent material testing, documentation of construction,
7 public involvement management, risk mitigation, and oversight
8 of construction activities including construction management,
9 maintenance of traffic, and permit compliance. The firm must
10 be prequalified in Construction Inspection. The payment for
11 this work would be based on a lump sum method of compensation.

12 Section 30. Evaluation committee.

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

20 (b) The Transportation Agency may establish an evaluation
21 committee for a set term or for the procurement of a particular
22 transportation facility.

23 (c) Once the Transportation Agency identifies the
24 proposers for a transportation facility, each member of an
25 evaluation committee must certify that no conflict of interest

1 exists between the member and the proposers. If the
2 Transportation Agency, after consultation with the chief
3 procurement officer, determines that an actual conflict
4 exists, the member shall not participate on the evaluation
5 committee for that procurement and the Transportation Agency
6 shall appoint a replacement member on either a permanent or a
7 temporary basis.

8 Section 35. Procedures for selection.

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

22 (b) After a response to a request for qualifications or a
23 request for proposals has been submitted as provided in
24 Section 25, a design-builder shall not replace, remove, or
25 otherwise modify any firm identified as a member of the

1 proposer team unless authorized to do so by the Transportation
2 Agency.

3 Section 40. Project records; confidentiality; public
4 disclosure.

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

10 (b) A proposer may identify those portions of a proposal
11 or other submission that the proposer considers to be trade
12 secrets or confidential, commercial, financial, or proprietary
13 information. Confidential and proprietary information,
14 including trade secrets, shall be exempt from disclosure only
15 if the proposer does the following:

16 (1) requests exclusion from disclosure upon submission
17 of the information or other materials for which protection
18 is sought;

19 (2) identifies the data or other materials for which
20 protection is sought;

21 (3) states the statutory or regulatory basis for the
22 protection;

23 (4) fully complies with the federal Freedom of
24 Information Act and any other applicable provisions of
25 State law, including, but not limited to, the Freedom of

1 Information Act, with respect to information the proposer
2 contends should be exempt from disclosure; and

3 (5) certifies if the information is in accordance with
4 the protection of the Illinois Trade Secrets Act.

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

23 Section 45. Design-build contract. A design-build contract
24 may include any provisions the Transportation Agency
25 determines are necessary or appropriate, including, but not

1 limited to, provisions regarding the following:

2 (1) compensation or payments to the design-builder;

3 (2) grounds for termination of the design-build
4 contract, including the Transportation Agency's right to
5 terminate for convenience;

6 (3) liability for damages and nonperformance;

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

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

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

15 (7) required performance and payment security;

16 (8) the terms and conditions of indemnification and
17 minimum insurance requirements; and

18 (9) any other terms and conditions the Transportation
19 Agency deems necessary.

20 Section 50. Construction Manager/General Contractor
21 contract.

22 (a) The Construction Manager/General Contractor contract
23 shall divide the Construction Manager/General Contractor
24 services into 2 phases. The first phase shall address
25 preconstruction services and the procedures the parties shall

1 follow to finalize the contract terms for the second phase.
2 The second phase shall address the Construction
3 Manager/General Contractor's construction of the
4 transportation facility for a lump sum or a guaranteed maximum
5 price.

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

8 (1) the Construction Manager/General Contractor's
9 provision of preconstruction services during the first
10 phase of the contract, including the Construction
11 Manager/General Contractor's compensation for those
12 services;

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

19 (A) compliance with this requirement shall be
20 based on an estimated cost for the construction work
21 approved by the Transportation Agency before the start
22 of the competitive bidding process; and

23 (B) the Construction Manager/General Contractor
24 may not use subcontracts with its wholly or partially
25 owned subsidiaries, parent companies, or affiliates to
26 satisfy this obligation;

1 (3) the process the Transportation Agency and the
2 Construction Manager/General Contractor shall use to
3 determine a lump sum or guaranteed maximum price for the
4 construction work, including a requirement that the
5 Transportation Agency conduct an independent cost estimate
6 for the construction work; and

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

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

19 (1) liability for damages and nonperformance;

20 (2) events of default and the rights and remedies
21 available to the Construction Manager/General Contractor
22 and the Transportation Agency in the event of a default or
23 delay;

24 (3) the identification of any technical specifications
25 that the Construction Manager/General Contractor must
26 comply with when aiding the Transportation Agency with

1 developing plans or performing construction work;

2 (4) required performance and payment security for the

3 construction phase of the contract;

4 (5) the terms and conditions of indemnification and

5 minimum insurance requirements; and

6 (6) any other terms and conditions the Transportation

7 Agency deems necessary.

8 (d) If the Construction Manager/General Contractor

9 contract is terminated for any reason, the Transportation

10 Agency, in its sole discretion, may readvertise the

11 Construction Manager/General Contractor contract under this

12 Act or use any other authorized procurement method to complete

13 the transportation facility or any portion of the

14 transportation facility. Once the contract is terminated, the

15 Transportation Agency may use any work product developed by

16 the Construction Manager/General Contractor to complete the

17 transportation facility.

18 Section 55. Funding and financing.

19 (a) The Transportation Agency may use any lawful source of

20 funding and financing to compensate a design-builder and

21 Construction Manager/General Contractor for work and services

22 performed under a design-build contract or Construction

23 Manager/General Contractor contract, as applicable, and the

24 Transportation Agency may combine federal, State, local, and

25 private funds to finance a transportation facility.

1 (b) Subject to appropriation by the General Assembly of
2 the required amounts, the Transportation Agency may obligate
3 and make expenditures of funds as and when needed to satisfy
4 its payment obligations under a design-build contract or
5 Construction Manager/General Contractor contract.

6 Section 56. Utilization requirements.

7 (a) Design-builder and Construction Manager/General
8 Contractor projects shall comply with Section 2-105 of the
9 Illinois Human Rights Act and all applicable laws and rules
10 that establish standards and procedures for the utilization of
11 minority, disadvantaged, and women-owned businesses,
12 including, but not limited to, the Business Enterprise for
13 Minorities, Women, and Persons with Disabilities Act. Each
14 design-build contract and Construction Manager/General
15 Contractor contract shall include remedies for a contractor's
16 failure to comply with commitments made in the proposal or
17 utilization plan, including, without limitation, failure to
18 cooperate in providing information regarding compliance or
19 termination of any subcontractor identified in the utilization
20 plan without the consent of the Transportation Agency. Such
21 remedies may include termination of the contract, imposition
22 of a penalty in an amount equivalent to any profit or cost
23 savings accruing to the contractor as a result of the
24 violation, or any other remedy available to the Transportation
25 Agency at law or in equity.

1 (b) For the purposes of this Section, aspirational goals
2 compliant with the Business Enterprise for Minorities, Women,
3 and Persons with Disabilities Act shall be established
4 separately for construction-related professional services and
5 shall be consistent with the Transportation Agency's
6 methodology for design-bid-build contracts. As used in this
7 Section, "construction-related professional services" means
8 those services within the scope of the practice of
9 architecture, professional engineering, structural
10 engineering, or land surveying, as defined in the Illinois
11 Architecture Practice Act of 1989, the Professional
12 Engineering Practice Act of 1989, the Illinois Professional
13 Land Surveyor Act of 1989, or the Illinois Structural
14 Engineering Practice Act of 1989.

15 Section 57. Labor.

16 (a) A contract or agreement under this Act shall require
17 the design-builder or Construction Manager/General Contractor,
18 and all subcontractors, to comply with Section 30-22 of the
19 Illinois Procurement Code as it applies to responsible bidders
20 and to present satisfactory evidence of that compliance to the
21 Transportation Agency, unless the transportation project is
22 federally funded and the application of those requirements
23 would jeopardize the receipt or use of federal funds in
24 support of the transportation project.

25 (b) A contract or agreement under this Act shall require

1 the design-builder or Construction Manager/General Contractor
2 to enter into a project labor agreement used by the
3 Transportation Agency.

4 (c) This Section does not apply to construction-related
5 professional services. As used in this Section,
6 "construction-related professional services" means those
7 services within the scope of the practice of architecture,
8 professional engineering, structural engineering, or land
9 surveying, as defined in the Illinois Architecture Practice
10 Act of 1989, the Professional Engineering Practice Act of
11 1989, the Illinois Professional Land Surveyor Act of 1989, or
12 the Illinois Structural Engineering Practice Act of 1989.

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

1 Section 65. Federal requirements. In the procurement of
2 design-build contracts and Construction Manager/General
3 Contractor contracts, the Transportation Agency shall, to the
4 extent applicable, comply with federal law and regulations and
5 take all necessary steps to adapt its rules, policies, and
6 procedures to remain eligible for federal aid.

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

15 Section 75. Rulemaking.

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

22 (b) The appropriate chief procurement officer, in
23 consultation with the Transportation Agency, may adopt rules

1 to carry out the provisions of this Act.

2 Section 80. Repeal. This Act is repealed on July 1, 2032.

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

6 (20 ILCS 2705/2705-233 new)

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

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

17 (20 ILCS 3501/825-108 new)

18 Sec. 825-108. Transportation project financing. For the
19 purpose of financing a transportation facility undertaken
20 under the Innovations for Transportation Infrastructure Act,
21 the Authority may apply for an allocation of tax-exempt bond

1 financing authorization provided by subsection (m) of Section
2 142 of the United States Internal Revenue Code, as well as
3 financing available under any other federal law or program.

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

6 (30 ILCS 500/1-10.5 new)

7 Sec. 1-10.5. Alternative Technical Concepts.

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

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

1 evaluation of Alternative Technical Concepts in the
2 procurement documents for that contract, including the
3 potential use of confidential meetings and the exchange of
4 confidential information with bidders and proposers to review
5 and discuss potential or proposed Alternative Technical
6 Concepts.

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

9 (30 ILCS 550/1.9 new)

10 Sec. 1.9. Design-build contracts and Construction
11 Manager/General Contractor contracts. This Act applies to any
12 design-build contract or Construction Manager/General
13 Contractor contract entered into under the Innovations for
14 Transportation Infrastructure Act.

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

17 (30 ILCS 570/2.8 new)

18 Sec. 2.8. Design-build and Construction Manager/General
19 Contractor contracts. This Act applies to any design-build
20 contracts and Construction Manager/General Contractor
21 contracts entered into under the Innovations for
22 Transportation Infrastructure Act.

1 Section 930. The Business Enterprise for Minorities,
2 Women, and Persons with Disabilities Act is amended by adding
3 Section 2.8 as follows:

4 (30 ILCS 575/2.8 new)

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

10 Section 935. The Toll Highway Act is amended by adding
11 Section 11.2 as follows:

12 (605 ILCS 10/11.2 new)

13 Sec. 11.2. Innovations for Transportation Infrastructure
14 Act. The Authority may exercise all powers granted to it under
15 the Innovations for Transportation Infrastructure Act,
16 including, but not limited to, the power to enter into all
17 contracts or agreements necessary to perform its powers under
18 that Act, and any powers related to a transportation facility
19 implemented under that Act.

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

1 (735 ILCS 30/15-5-48 new)

2 Sec. 15-5-48. Eminent domain powers in new Acts. The
3 following provisions of law may include express grants of the
4 power to acquire property by condemnation or eminent domain:

5 The Innovations for Transportation Infrastructure Act; for
6 the purposes of constructing a transportation facility under
7 the Act.

8 Section 945. The Prevailing Wage Act is amended by
9 changing Section 2 as follows:

10 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

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

17 As used in this Act, unless the context indicates
18 otherwise:

19 "Public works" means all fixed works constructed or
20 demolished by any public body, or paid for wholly or in part
21 out of public funds. "Public works" as defined herein includes
22 all projects financed in whole or in part with bonds, grants,
23 loans, or other funds made available by or through the State or

1 any of its political subdivisions, including but not limited
2 to: bonds issued under the Industrial Project Revenue Bond Act
3 (Article 11, Division 74 of the Illinois Municipal Code), the
4 Industrial Building Revenue Bond Act, the Illinois Finance
5 Authority Act, the Illinois Sports Facilities Authority Act,
6 or the Build Illinois Bond Act; loans or other funds made
7 available pursuant to the Build Illinois Act; loans or other
8 funds made available pursuant to the Riverfront Development
9 Fund under Section 10-15 of the River Edge Redevelopment Zone
10 Act; or funds from the Fund for Illinois' Future under Section
11 6z-47 of the State Finance Act, funds for school construction
12 under Section 5 of the General Obligation Bond Act, funds
13 authorized under Section 3 of the School Construction Bond
14 Act, funds for school infrastructure under Section 6z-45 of
15 the State Finance Act, and funds for transportation purposes
16 under Section 4 of the General Obligation Bond Act. "Public
17 works" also includes (i) all projects financed in whole or in
18 part with funds from the Department of Commerce and Economic
19 Opportunity under the Illinois Renewable Fuels Development
20 Program Act for which there is no project labor agreement;
21 (ii) all work performed pursuant to a public private agreement
22 under the Public Private Agreements for the Illiana Expressway
23 Act or the Public-Private Agreements for the South Suburban
24 Airport Act; ~~and~~ (iii) all projects undertaken under a
25 public-private agreement under the Public-Private Partnerships
26 for Transportation Act; and (iv) all transportation facilities

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

25 "Construction" means all work on public works involving
26 laborers, workers or mechanics. This includes any maintenance,

1 repair, assembly, or disassembly work performed on equipment
2 whether owned, leased, or rented.

3 "Locality" means the county where the physical work upon
4 public works is performed, except (1) that if there is not
5 available in the county a sufficient number of competent
6 skilled laborers, workers and mechanics to construct the
7 public works efficiently and properly, "locality" includes any
8 other county nearest the one in which the work or construction
9 is to be performed and from which such persons may be obtained
10 in sufficient numbers to perform the work and (2) that, with
11 respect to contracts for highway work with the Department of
12 Transportation of this State, "locality" may at the discretion
13 of the Secretary of the Department of Transportation be
14 construed to include two or more adjacent counties from which
15 workers may be accessible for work on such construction.

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

25 "Labor organization" means an organization that is the
26 exclusive representative of an employer's employees recognized

1 or certified pursuant to the National Labor Relations Act.

2 The terms "general prevailing rate of hourly wages",
3 "general prevailing rate of wages" or "prevailing rate of
4 wages" when used in this Act mean the hourly cash wages plus
5 annualized fringe benefits for training and apprenticeship
6 programs approved by the U.S. Department of Labor, Bureau of
7 Apprenticeship and Training, health and welfare, insurance,
8 vacations and pensions paid generally, in the locality in
9 which the work is being performed, to employees engaged in
10 work of a similar character on public works.

11 (Source: P.A. 100-1177, eff. 6-1-19.)

12 Section 995. No acceleration or delay. Where this Act
13 makes changes in a statute that is represented in this Act by
14 text that is not yet or no longer in effect (for example, a
15 Section represented by multiple versions), the use of that
16 text does not accelerate or delay the taking effect of (i) the
17 changes made by this Act or (ii) provisions derived from any
18 other Public Act.

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

21 Section 999. Effective date. This Act takes effect upon
22 becoming law.