



Sen. Ram Villivalam

**Filed: 2/22/2022**

10200SB2981sam002

LRB102 21866 RJT 36799 a

1 AMENDMENT TO SENATE BILL 2981

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2981 by replacing  
3 everything after the enacting clause with the following:

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

1 private sector that are generally retained by the public in  
2 the conventional design-bid-build project delivery method.

3 (c) It is the intent of the General Assembly that the  
4 Department of Transportation and the Illinois State Toll  
5 Highway Authority may evaluate and use Alternative Technical  
6 Concepts proposed by bidders and proposers and to use the  
7 design-build project delivery method and Construction  
8 Manager/General Contractor project delivery method.

9 (d) It is the intent of this Act to use design  
10 professionals, construction companies, and workers from this  
11 State, reflecting the diversity of the State's businesses and  
12 workforce, to the greatest extent possible.

13 (e) Except as otherwise provided in this Act, the powers  
14 granted in this Act are in addition to any other powers  
15 authorized under applicable law.

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

17 "Alternative Technical Concepts" means a proposed  
18 deviation from the contract requirements set forth in the  
19 procurement documents for a transportation facility that  
20 offers a solution that is equal to or better than the  
21 requirements in the procurement documents.

22 "Authority" means the Illinois State Toll Highway  
23 Authority.

24 "Best value" means any selection process in which  
25 proposals contain both price and qualitative components and

1 award is based upon a combination of price, qualitative  
2 concepts, and other factors.

3 "Chief procurement officer" means the chief procurement  
4 officer for the Transportation Agency.

5 "Construction Manager/General Contractor" means a proposer  
6 that has entered into a Construction Manager/General  
7 Contractor contract under this Act.

8 "Construction Manager/General Contractor contract" means a  
9 two-phase contract between the Transportation Agency and a  
10 Construction Manager/General Contractor that includes a first  
11 phase addressing preconstruction services and a second phase  
12 addressing the construction of the transportation facility.

13 "Construction Manager/General Contractor project delivery  
14 method" means a method of procurement and contracting that  
15 makes a Construction Manager/General Contractor who enters  
16 into a contract with the Transportation Agency responsible for  
17 certain preconstruction services and then, if the parties  
18 reach agreement on key terms, responsible for construction of  
19 the transportation facility.

20 "Department" means the Illinois Department of  
21 Transportation.

22 "Design-bid-build project delivery method" means the  
23 traditional method of procuring and contracting for design  
24 services and construction services used separately in this  
25 State that incorporates the Architectural, Engineering, and  
26 Land Surveying Qualifications Based Selection Act and the

1 principles of competitive bidding under the Illinois  
2 Procurement Code.

3 "Design-build contract" means a contract between the  
4 Transportation Agency and a design-builder under which the  
5 design-builder agrees to furnish architectural, surveying,  
6 engineering, construction, and related services for a  
7 transportation facility, and may include, but is not limited  
8 to, the progressive design-build project delivery method.

9 "Design-build project delivery method" means a method of  
10 procurement and contracting that provides responsibility  
11 within a single contract between the Transportation Agency and  
12 a design-builder for the furnishing of architectural,  
13 surveying, engineering, construction, and related services for  
14 a transportation facility.

15 "Design-builder" means a proposer that has entered into a  
16 design-build contract with the Transportation Agency under  
17 this Act.

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

20 "Evaluation criteria" means the standards and requirements  
21 established by the Transportation Agency against which the  
22 qualifications and proposals of a proposer will be assessed  
23 during the procurement of a design-build contract or  
24 Construction Manager/General Contractor contract, as  
25 applicable.

26 "Executive Director" means the Executive Director of the

1 Illinois State Toll Highway Authority.

2 "Metropolitan planning organization" means a metropolitan  
3 planning organization under 23 U.S.C. 134 whose metropolitan  
4 planning area boundaries are partially or completely within  
5 this State.

6 "Preconstruction services" means all  
7 non-construction-related services that a Construction  
8 Manager/General Contractor is required to perform during the  
9 first phase of a Construction Manager/General Contractor  
10 contract, and may include, but is not limited to, giving  
11 advice to the Transportation Agency regarding scheduling, work  
12 sequencing, cost engineering, constructability, cost  
13 estimating, and risk identification.

14 "Progressive design-build project delivery method" is a  
15 type of design-build project delivery method that consists of  
16 2 phases, with the first phase including budget-level design  
17 development, preconstruction services, and negotiation of a  
18 contract price (either lump sum or guaranteed maximum price).  
19 After completion of the first phase, the second phase is  
20 begun. The second phase consists of final design,  
21 construction, and commissioning of the project.

22 "Proposal" means a proposer's response to a request for  
23 proposals.

24 "Proposer" means any individual, sole proprietorship,  
25 firm, partnership, joint venture, corporation, professional  
26 corporation, or other entity legally established to conduct

1 business in this State that proposes to be the design-builder  
2 or Construction Manager/General Contractor for any  
3 transportation facility under this Act.

4 "Qualifications" means a statement of qualifications  
5 submitted by a proposer in response to a request for  
6 qualifications.

7 "Request for proposals" means the document issued by the  
8 Transportation Agency to solicit proposals and describe the  
9 procurement process for a design-build contract or  
10 Construction Manager/General Contractor contract in accordance  
11 with the design-build project delivery method or the  
12 Construction Manager/General Contractor project delivery  
13 method, as applicable.

14 "Request for qualifications" means the document issued by  
15 the Transportation Agency in the first phase of a two-phase  
16 procurement to solicit qualifications from proposers in  
17 accordance with the design-build project delivery method or  
18 the Construction Manager/General Contractor project delivery  
19 method, as applicable.

20 "Scope and performance requirements" means the activities,  
21 constructed elements, and standards of performance the  
22 Transportation Agency requires the design-builder or the  
23 Construction Manager/General Contractor to comply with in the  
24 development of the transportation facility, and may include,  
25 but is not limited to, the intended usage, capacity, size,  
26 scope, quality and performance standards, life-cycle costs,

1 preliminary engineering, design, and other requirements as  
2 developed and determined by the Transportation Agency.

3 "Secretary" means the Secretary of the Illinois Department  
4 of Transportation.

5 "Transportation Agency" means the Illinois Department of  
6 Transportation or the Illinois State Toll Highway Authority.

7 "Transportation facility" means any new or existing  
8 facility or group of facilities that are the subject of a  
9 design-build contract or a Construction Manager/General  
10 Contractor contract, and includes highways, roads, bridges,  
11 tunnels, overpasses, bus ways, guideways, ferries, airports or  
12 other aviation facilities, public transportation facilities,  
13 vehicle parking facilities, port facilities, rail facilities,  
14 stations, hubs, terminals, intermodal facilities, transit  
15 facilities, or similar facilities used for the transportation  
16 of persons or goods, together with any buildings, structures,  
17 parking areas, appurtenances, intelligent transportation  
18 systems, and other property or facilities related to the  
19 operation or maintenance of these facilities.

20 Section 15. Authorization of project delivery methods.

21 (a) Notwithstanding any other law, and as authority  
22 supplemental to its existing powers, except as otherwise  
23 provided for in this Act, the Transportation Agency, in  
24 accordance with this Act, may use the design-build project  
25 delivery method for transportation facilities if the capital

1 costs for transportation facilities delivered utilizing the  
2 design-build project delivery method or Construction  
3 Manager/General Contractor project delivery method or  
4 Alternative Technical Concepts in a design-bid-build project  
5 delivery method do not: (i) for transportation facilities  
6 delivered by the Department, exceed \$400 million of contracts  
7 awarded during the Department's multi-year highway improvement  
8 program for any 5-year period; or (ii) for transportation  
9 facilities delivered by the Authority, exceed 20% of the  
10 Authority's annual improvement program. The Transportation  
11 Agency shall make this calculation before commencing the  
12 procurement. Notwithstanding any other law, and as authority  
13 supplemental to its existing powers, the Department, in  
14 accordance with this Act, may use the Construction  
15 Manager/General Contractor project delivery method for up to 2  
16 transportation facilities per year. Before commencing a  
17 procurement under this Act for either a design-build contract  
18 or a Construction Manager/General Contractor contract, the  
19 Transportation Agency shall first undertake an analysis and  
20 make a written determination that it is in the best interests  
21 of this State to use the selected delivery method for that  
22 transportation facility. The analysis and determination shall  
23 discuss the design-build project delivery method or  
24 Construction Manager/General Contractor project delivery  
25 method's impact on the anticipated schedule, completion date,  
26 and project costs. The best interests of the State analysis



1 shall be made available to the public.

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

6 (c) A contract entered into pursuant to the provisions of  
7 this Act are excepted from the Public Contract Fraud Act.

8 Section 20. Preconditions to commencement of procurement.

9 If the Transportation Agency determines to use the  
10 design-build project delivery method or the Construction  
11 Manager/General Contractor project delivery method for a  
12 particular transportation facility, the Transportation Agency  
13 may not commence a procurement for the transportation facility  
14 until the Transportation Agency has satisfied the following  
15 requirements:

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

17 (A) the Transportation Agency includes the  
18 transportation facility in the Transportation Agency's  
19 respective multi-year highway improvement program and  
20 designates it as a design-build project delivery method  
21 project or Construction Manager/General Contractor  
22 project;

23 (B) the Transportation Agency issues a notice of  
24 intent to receive qualifications, that includes a  
25 description of the proposed procurement and transportation

1 facility, at least 28 days before the issuance of the  
2 request for qualifications, and for a Department-issued  
3 notice of intent publishes the notice in the Illinois  
4 Transportation Procurement Bulletin and for an  
5 Authority-issued notice of intent publishes the notice in  
6 the Illinois Procurement Bulletin; or

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

17 (2) the Transportation Agency uses its best efforts to  
18 ensure that the transportation facility is consistent with the  
19 regional plan in existence at the time of any metropolitan  
20 planning organization in which the boundaries of the  
21 transportation facility is located, or any other  
22 publicly-approved plan.

23 Section 25. Procurement process.

24 (a) The Transportation Agency may solicit a proposer with  
25 which to enter into a design-build contract or Construction

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

23 (b) The request for qualifications may contain any terms  
24 deemed appropriate by the Transportation Agency including,  
25 without limitation, the following:

26 (1) a description of the anticipated scope of work for

1 the transportation facility;

2 (2) a requirement that the proposer identify certain  
3 key personnel, and for design-build contracts certain key  
4 firms, the experience of the personnel and firms, and the  
5 conditions on which identified personnel and firms can be  
6 replaced;

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

17 (4) the Transportation Agency's prequalification,  
18 licensing, and registration requirements, including any  
19 requirements from the Professional Engineering Practice  
20 Act of 1989, the Illinois Architecture Practice Act of  
21 1989, the Structural Engineering Practice Act of 1989, and  
22 the Illinois Professional Land Surveyor Act of 1989,  
23 except that nothing contained herein precludes the  
24 Transportation Agency's use of additional prequalification  
25 criteria or pass-fail evaluation factors addressing  
26 minimum levels of technical experience or financial

1 capabilities;

2 (5) a requirement that the proposer provide references  
3 or contact information for persons who can attest to the  
4 past performance of the proposer, including with respect  
5 to successful project delivery, subcontracting, labor  
6 relations, diverse business utilization, workforce  
7 diversity, and compliance with contract requirements;

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

10 (7) any other relevant information the Transportation  
11 Agency deems appropriate.

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

25 (d) The request for proposals may contain any terms deemed  
26 appropriate by the Transportation Agency including, without

1 limitation, the following:

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

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

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

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

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

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

25 (7) requirements regarding utilization of business  
26 enterprises, including disadvantaged business

1 enterprises, and workforce development, including a  
2 description of utilization and workforce diversity plans  
3 and certifications to be provided in the proposals for  
4 both design and construction phases;

5 (8) requirements regarding the proposer's  
6 qualifications; and

7 (9) any other relevant information the Transportation  
8 Agency deems appropriate.

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

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

18 (g) The Transportation Agency may offer to pay a stipend  
19 in an amount and on the terms and conditions determined by the  
20 Transportation Agency and as set forth in the request for  
21 proposals to: (1) all shortlisted proposers if the  
22 Transportation Agency cancels the procurement after the  
23 proposals have been released, but before the due date for  
24 proposals; or (2) each unsuccessful proposer that submits a  
25 responsive proposal; or (3) each member of the proposer team  
26 that incurs costs in the preparation of the proposal. The

1 Transportation Agency may pay a stipend only to those  
2 proposers who grant to the Transportation Agency the right to  
3 use any work product contained in the unsuccessful proposer's  
4 proposal and other proposal-related submissions or, if the  
5 Transportation Agency cancels the procurement after the  
6 proposals have been released, but before the due date for  
7 proposals, any work product developed before cancellation,  
8 including technologies, techniques, methods, processes, and  
9 information contained in the recipient's design for the  
10 transportation facility.

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

23 (i) The Transportation Agency has the right to reject any  
24 and all qualifications or proposals, including, but not  
25 limited to, the right to reject any qualifications or  
26 proposals as non-responsive, if, in the Transportation



1 Agency's sole discretion, the qualifications or proposals do  
2 not meet all material requirements of the request for  
3 qualifications or request for proposals, as appropriate. The  
4 Transportation Agency shall not consider a proposal that does  
5 not include:

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

10 (2) bid security in the form and amount designated in  
11 the request for proposals.

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

23 (k) To ensure taxpayer accountability, for any project  
24 with an estimated cost over \$30,000,000, the Transportation  
25 Agency shall independently procure an owner's representative  
26 or construction manager to supplement staff directly employed

1 by the Transportation Agency, provide design reviews,  
2 constructability reviews, construction acceptance, oversight  
3 of utility relocations, independent quality assurance surveys,  
4 independent material testing, documentation of construction,  
5 risk mitigation, and oversight of construction activities,  
6 including construction management, maintenance of traffic,  
7 permit compliance, and other services which may include: value  
8 engineering, stakeholder coordination, or public involvement  
9 management.

10 Section 30. Evaluation committee.

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

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

21 (c) Once the Transportation Agency identifies the  
22 proposers for a transportation facility, each member of an  
23 evaluation committee must certify that no conflict of interest  
24 exists between the member and the proposers. If the  
25 Transportation Agency, after consultation with the chief

1 procurement officer, determines that an actual conflict  
2 exists, the member shall not participate on the evaluation  
3 committee for that procurement and the Transportation Agency  
4 shall appoint a replacement member on either a permanent or a  
5 temporary basis.

6 Section 35. Procedures for selection.

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

20 (b) After a response to a request for qualifications or a  
21 request for proposals has been submitted as provided in  
22 Section 25, a design-builder shall not replace, remove, or  
23 otherwise modify any firm identified as a member of the  
24 proposer team unless authorized to do so by the Transportation  
25 Agency.

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  
9 or other submission that the proposer considers to be trade  
10 secrets or confidential, commercial, financial, or proprietary  
11 information. Confidential and proprietary information,  
12 including trade secrets, shall be exempt from disclosure only  
13 if the proposer does the following:

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

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

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

21 (4) fully complies 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

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

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

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

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

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

4           (3) liability for damages and nonperformance;

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

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

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

13           (7) required performance and payment security;

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

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

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

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

1 Manager/General Contractor's construction of the  
2 transportation facility for a lump sum or a guaranteed maximum  
3 price.

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

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

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

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

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

25 (3) the process the Transportation Agency and the  
26 Construction Manager/General Contractor shall use to

1 determine a lump sum or guaranteed maximum price for the  
2 construction work, including a requirement that the  
3 Transportation Agency conduct an independent cost estimate  
4 for the construction work; and

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

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

17 (1) liability for damages and nonperformance;

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

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

26 (4) required performance and payment security for the



1 construction phase of the contract;

2 (5) the terms and conditions of indemnification and  
3 minimum insurance requirements; and

4 (6) any other terms and conditions the Transportation  
5 Agency deems necessary.

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

16 Section 55. Funding and financing.

17 (a) The Transportation Agency may use any lawful source of  
18 funding and financing to compensate a design-builder and  
19 Construction Manager/General Contractor for work and services  
20 performed under a design-build contract or Construction  
21 Manager/General Contractor contract, as applicable, and the  
22 Transportation Agency may combine federal, State, local, and  
23 private funds to finance a transportation facility. Any  
24 Transportation Agency that administers a construction program  
25 for which federal law or regulations establish standards and

1 procedures for the utilization of minority-owned and  
2 women-owned businesses and disadvantaged businesses shall  
3 implement a disadvantaged business enterprise program to  
4 include minority-owned and women-owned businesses and  
5 disadvantaged businesses, using the federal standards and  
6 procedures for the establishment of goals and utilization  
7 procedures for the State-funded, as well as the federally  
8 assisted, portions of the program. In cases of federal funding  
9 or federally assisted projects, these goals shall not exceed  
10 those established pursuant to the relevant and applicable  
11 federal statutes or regulations.

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

17 Section 56. Utilization requirements.

18 (a) Design-builder and Construction Manager/General  
19 Contractor projects shall comply with Section 2-105 of the  
20 Illinois Human Rights Act and all applicable laws and rules  
21 that establish standards and procedures for the utilization of  
22 minority, disadvantaged, and women-owned businesses,  
23 including, but not limited to, the Business Enterprise for  
24 Minorities, Women, and Persons with Disabilities Act. Any  
25 Transportation Agency that administers a construction program,

1 for which federal law or regulations establish standards and  
2 procedures for the utilization of minority-owned and  
3 women-owned businesses and disadvantaged businesses shall  
4 implement a disadvantaged business enterprise program to  
5 include minority-owned and women-owned businesses and  
6 disadvantaged businesses, using the federal standards and  
7 procedures for the establishment of goals and utilization  
8 procedures for the State-funded, as well as the federally  
9 assisted, portions of the program. In cases of federal funding  
10 or federally assisted projects, these goals shall not exceed  
11 those established pursuant to the relevant and applicable  
12 federal statutes or regulations. Each design-build contract  
13 and Construction Manager/General Contractor contract shall  
14 include remedies for a contractor's failure to comply with  
15 commitments made in the proposal or utilization plan,  
16 including, without limitation, failure to cooperate in  
17 providing information regarding compliance or termination of  
18 any subcontractor identified in the utilization plan without  
19 the consent of the Transportation Agency. Such remedies may  
20 include termination of the contract, imposition of a penalty  
21 in an amount equivalent to any profit or cost savings accruing  
22 to the contractor as a result of the violation, withholding of  
23 payments, liquidated damages, disqualification from future  
24 bidding as non-responsible, or any other remedy available to  
25 the Transportation Agency at law or in equity.

26 (b) For the purposes of this Section, aspirational goals

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

14 Section 57. Labor.

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

24 (b) A contract or agreement under this Act shall require  
25 the design-builder or Construction Manager/General Contractor

1 to enter into a project labor agreement used by the  
2 Transportation Agency.

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

12 Section 58. Disadvantaged business enterprise liaison. The  
13 Office of Business and Workforce Diversity established under  
14 Section 2705-593 of the Department of Transportation Law of  
15 the Civil Administrative Code of Illinois shall retain a staff  
16 member or consultant to act as a liaison of for outreach,  
17 monitoring, and compliance with the Department's Disadvantaged  
18 Business Enterprise Program consistent with all applicable  
19 federal rules governing the disadvantaged business enterprise  
20 process. The Department shall also determine attainable goals  
21 for projects using the new project delivery procurement  
22 methods, in accordance with federal regulations. The  
23 Department shall publish a quarterly report regarding projects  
24 sourced through new procurements methods that includes  
25 utilization goals and utilization achieved.

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

14           Section 65. Federal requirements. In the procurement of  
15 design-build contracts and Construction Manager/General  
16 Contractor contracts, the Transportation Agency shall, to the  
17 extent applicable, comply with federal law and regulations and  
18 take all necessary steps to adapt its rules, policies, and  
19 procedures to remain eligible for federal aid.

20           Section 70. Powers. The powers granted to the  
21 Transportation Agency under this Act, including the power to  
22 procure and enter into design-build contracts and Construction  
23 Manager/General Contractor contracts, shall be liberally

1 construed to accomplish its purpose, are in addition to any  
2 existing powers of the Transportation Agency, and shall not  
3 affect or impair any other powers authorized under applicable  
4 law, except as otherwise provided for in this Act.

5 Section 75. Rulemaking.

6 (a) The Illinois Administrative Procedure Act applies to  
7 all administrative rules and procedures of the Transportation  
8 Agency under this Act, except that nothing in this Act shall be  
9 construed to render any prequalification or other  
10 responsibility criteria as a "license" or "licensing" under  
11 that Act.

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

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

16 Section 905. The Department of Transportation Law of the  
17 Civil Administrative Code of Illinois is amended by adding  
18 Section 2705-233 as follows:

19 (20 ILCS 2705/2705-233 new)

20 Sec. 2705-233. Innovations for Transportation  
21 Infrastructure Act. The Department may exercise all powers  
22 granted to it under the Innovations for Transportation

1 Infrastructure Act, including, but not limited to, the power  
2 to enter into all contracts or agreements necessary or  
3 incidental to the performance of its powers under that Act,  
4 and powers related to any transportation facility implemented  
5 under that Act.

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

8 (20 ILCS 3501/825-108 new)

9 Sec. 825-108. Transportation project financing. For the  
10 purpose of financing a transportation facility undertaken  
11 under the Innovations for Transportation Infrastructure Act,  
12 the Authority may apply for an allocation of tax-exempt bond  
13 financing authorization provided by subsection (m) of Section  
14 142 of the United States Internal Revenue Code, as well as  
15 financing available under any other federal law or program.

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

18 (30 ILCS 500/1-10.5 new)

19 Sec. 1-10.5. Alternative Technical Concepts.

20 (a) For the purposes of this Section, "Alternative  
21 Technical Concepts" and "design-bid-build project delivery  
22 method" have the meanings ascribed to those terms in the



1 Innovations for Transportation Infrastructure Act.

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

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

23 (30 ILCS 550/1.9 new)

24 Sec. 1.9. Design-build contracts and Construction

1 Manager/General Contractor contracts. This Act applies to any  
2 design-build contract or Construction Manager/General  
3 Contractor contract entered into under the Innovations for  
4 Transportation Infrastructure Act.

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

7 (30 ILCS 570/2.8 new)

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

13 Section 930. The Business Enterprise for Minorities,  
14 Women, and Persons with Disabilities Act is amended by adding  
15 Section 2.8 as follows:

16 (30 ILCS 575/2.8 new)

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

1 Section 935. The Toll Highway Act is amended by adding  
2 Section 11.2 as follows:

3 (605 ILCS 10/11.2 new)

4 Sec. 11.2. Innovations for Transportation Infrastructure  
5 Act. The Authority may exercise all powers granted to it under  
6 the Innovations for Transportation Infrastructure Act,  
7 including, but not limited to, the power to enter into all  
8 contracts or agreements necessary to perform its powers under  
9 that Act, and any powers related to a transportation facility  
10 implemented under that Act.

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

13 (735 ILCS 30/15-5-48 new)

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

17 The Innovations for Transportation Infrastructure Act; for  
18 the purposes of constructing a transportation facility under  
19 the Act.

20 Section 945. The Prevailing Wage Act is amended by  
21 changing Section 2 as follows:

1 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

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

8 As used in this Act, unless the context indicates  
9 otherwise:

10 "Public works" means all fixed works constructed or  
11 demolished by any public body, or paid for wholly or in part  
12 out of public funds. "Public works" as defined herein includes  
13 all projects financed in whole or in part with bonds, grants,  
14 loans, or other funds made available by or through the State or  
15 any of its political subdivisions, including but not limited  
16 to: bonds issued under the Industrial Project Revenue Bond Act  
17 (Article 11, Division 74 of the Illinois Municipal Code), the  
18 Industrial Building Revenue Bond Act, the Illinois Finance  
19 Authority Act, the Illinois Sports Facilities Authority Act,  
20 or the Build Illinois Bond Act; loans or other funds made  
21 available pursuant to the Build Illinois Act; loans or other  
22 funds made available pursuant to the Riverfront Development  
23 Fund under Section 10-15 of the River Edge Redevelopment Zone  
24 Act; or funds from the Fund for Illinois' Future under Section  
25 6z-47 of the State Finance Act, funds for school construction  
26 under Section 5 of the General Obligation Bond Act, funds

1 authorized under Section 3 of the School Construction Bond  
2 Act, funds for school infrastructure under Section 6z-45 of  
3 the State Finance Act, and funds for transportation purposes  
4 under Section 4 of the General Obligation Bond Act. "Public  
5 works" also includes (i) all projects financed in whole or in  
6 part with funds from the Environmental Protection Agency under  
7 the Illinois Renewable Fuels Development Program Act for which  
8 there is no project labor agreement; (ii) all work performed  
9 pursuant to a public private agreement under the Public  
10 Private Agreements for the Illiana Expressway Act or the  
11 Public-Private Agreements for the South Suburban Airport Act;  
12 ~~and~~ (iii) all projects undertaken under a public-private  
13 agreement under the Public-Private Partnerships for  
14 Transportation Act; and (iv) all transportation facilities  
15 undertaken under a design-build contract or a Construction  
16 Manager/General Contractor contract under the Innovations for  
17 Transportation Infrastructure Act. "Public works" also  
18 includes all projects at leased facility property used for  
19 airport purposes under Section 35 of the Local Government  
20 Facility Lease Act. "Public works" also includes the  
21 construction of a new wind power facility by a business  
22 designated as a High Impact Business under Section  
23 5.5(a)(3)(E) and the construction of a new utility-scale solar  
24 power facility by a business designated as a High Impact  
25 Business under Section 5.5(a)(3)(E-5) of the Illinois  
26 Enterprise Zone Act. "Public works" also includes electric

1 vehicle charging station projects financed pursuant to the  
2 Electric Vehicle Act and renewable energy projects required to  
3 pay the prevailing wage pursuant to the Illinois Power Agency  
4 Act. "Public works" does not include work done directly by any  
5 public utility company, whether or not done under public  
6 supervision or direction, or paid for wholly or in part out of  
7 public funds. "Public works" also includes construction  
8 projects performed by a third party contracted by any public  
9 utility, as described in subsection (a) of Section 2.1, in  
10 public rights-of-way, as defined in Section 21-201 of the  
11 Public Utilities Act, whether or not done under public  
12 supervision or direction, or paid for wholly or in part out of  
13 public funds. "Public works" also includes construction  
14 projects that exceed 15 aggregate miles of new fiber optic  
15 cable, performed by a third party contracted by any public  
16 utility, as described in subsection (b) of Section 2.1, in  
17 public rights-of-way, as defined in Section 21-201 of the  
18 Public Utilities Act, whether or not done under public  
19 supervision or direction, or paid for wholly or in part out of  
20 public funds. "Public works" also includes any corrective  
21 action performed pursuant to Title XVI of the Environmental  
22 Protection Act for which payment from the Underground Storage  
23 Tank Fund is requested. "Public works" does not include  
24 projects undertaken by the owner at an owner-occupied  
25 single-family residence or at an owner-occupied unit of a  
26 multi-family residence. "Public works" does not include work

1 performed for soil and water conservation purposes on  
2 agricultural lands, whether or not done under public  
3 supervision or paid for wholly or in part out of public funds,  
4 done directly by an owner or person who has legal control of  
5 those lands.

6 "Construction" means all work on public works involving  
7 laborers, workers or mechanics. This includes any maintenance,  
8 repair, assembly, or disassembly work performed on equipment  
9 whether owned, leased, or rented.

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

23 "Public body" means the State or any officer, board or  
24 commission of the State or any political subdivision or  
25 department thereof, or any institution supported in whole or  
26 in part by public funds, and includes every county, city,

1 town, village, township, school district, irrigation, utility,  
2 reclamation improvement or other district and every other  
3 political subdivision, district or municipality of the state  
4 whether such political subdivision, municipality or district  
5 operates under a special charter or not.

6 "Labor organization" means an organization that is the  
7 exclusive representative of an employer's employees recognized  
8 or certified pursuant to the National Labor Relations Act.

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

18 (Source: P.A. 102-9, eff. 1-1-22; 102-444, eff. 8-20-21;  
19 102-673, eff. 11-30-21; revised 12-9-21.)

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

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