



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6895

by Rep. Luis Arroyo

SYNOPSIS AS INTRODUCED:

605 ILCS 130/15
605 ILCS 130/17
605 ILCS 130/20
605 ILCS 130/25

Amends the Public Private Agreements for the Illiana Expressway Act. In provisions authorizing public private agreements in connection with the expressway, requires that the Department of Transportation's rules promulgated under the Act establish firm goals, standards, processes, appeals procedures, reporting requirements, and penalties by which the Department ensures that the contractor or contractors promote and permit the participation of businesses that are subject to the provisions of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act. In connection with the Department's retention of an advisor or advisors, requires that an advisor or advisors have significant experience in ensuring the participation of entities subject to the Business Enterprise for Minorities, Females, and Persons with Disabilities Act. Adds provisions that must be included in the public private agreement, including provisions requiring that the contractor undertake specific outreach, sub-contracting, reporting, mentoring, and other measures to promote and ensure the participation of enterprises owned by minorities, females, and persons with disabilities, provisions concerning liquidated damages, and provisions requiring that in financing the project by issuing bonds or other financing instruments, the contractor shall, as certified by the Governor's Office of Management and Budget, ensure the participation of emerging investment managers as defined in the Illinois Pension Code. Makes other changes. Effective immediately.

LRB096 23126 DRJ 42466 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 5. The Public Private Agreements for the Illiana
5 Expressway Act is amended by changing Sections 15, 17, 20, and
6 25 as follows:

7 (605 ILCS 130/15)

8 Sec. 15. Public private agreement authorized.

9 (a) Notwithstanding any provision of law to the contrary,
10 the Department on behalf of the State may, pursuant to a
11 competitive request for proposals process governed by the
12 Illinois Procurement Code and rules adopted under that Code and
13 this Act prior to the issuance of said request for proposals,
14 enter into one or more public private agreements with one or
15 more contractors to develop, finance, construct, manage, or
16 operate the Illiana Expressway on behalf of the State, and
17 further pursuant to which the contractors may receive certain
18 revenues including user fees in consideration of the payment of
19 moneys to the State for that right, provided, however, that the
20 rules promulgated under this Act establish firm goals,
21 standards, processes, appeals procedures, reporting
22 requirements, and penalties by which the Department ensures
23 that said contractor or contractors promote and permit the

1 participation of businesses that are subject to the provisions
2 of the Business Enterprise for Minorities, Females, and Persons
3 with Disabilities Act.

4 (b) Before taking any action in connection with the
5 development, financing, maintenance, or operation of the
6 Illiana Expressway that is not authorized by an interim
7 agreement under Section 30 of this Act, a contractor shall
8 enter into a public private agreement.

9 (c) The term of a public private agreement, including all
10 extensions, shall be no more than 99 years.

11 (d) The term of a public private agreement may be extended
12 but only if the extension is specifically authorized by the
13 General Assembly by law.

14 (Source: P.A. 96-913, eff. 6-9-10.)

15 (605 ILCS 130/17)

16 Sec. 17. Procurement; prequalification. The Department may
17 establish a process for prequalification of offerors,
18 provided, however, that the process is governed by rules that
19 the Department promulgates under this Act. If the Department
20 does create such a process, it shall: (i) provide a public
21 notice of the prequalification at least 30 days prior to the
22 date on which applications are due; (ii) set forth requirements
23 and evaluation criteria in order to become prequalified; (iii)
24 determine which offerors that have submitted prequalification
25 applications, if any, meet the requirements and evaluation

1 criteria; and (iv) allow only those offerors that have been
2 prequalified to respond to the request for proposals.

3 (Source: P.A. 96-913, eff. 6-9-10.)

4 (605 ILCS 130/20)

5 Sec. 20. Procurement; request for proposals process.

6 (a) Notwithstanding any provision of law to the contrary,
7 the Department on behalf of the State shall select a contractor
8 through a competitive request for proposals process governed by
9 the Illinois Procurement Code and rules adopted under that Code
10 and this Act.

11 (b) The competitive request for proposals process shall, at
12 a minimum, solicit statements of qualification and proposals
13 from offerors.

14 (c) The competitive request for proposals process shall, at
15 a minimum, take into account the following criteria:

16 (1) The offeror's plans for the Illiana Expressway
17 project;

18 (2) The offeror's current and past business practices;

19 (3) The offeror's poor or inadequate past performance
20 in developing, financing, constructing, managing, or
21 operating highways or other public assets;

22 (4) The offeror's ability to meet and past performance
23 in meeting or exhausting good faith efforts to meet the
24 utilization goals for business enterprises established in
25 the Business Enterprise for Minorities, Females, and

1 Persons with Disabilities Act;

2 (5) The offeror's ability to comply with and past
3 performance in complying with Section 2-105 of the Illinois
4 Human Rights Act; and

5 (6) The offeror's plans to comply with the Business
6 Enterprise for Minorities, Females, and Persons with
7 Disabilities Act and Section 2-105 of the Illinois Human
8 Rights Act, including its plans for outreach, reporting,
9 mentoring, and other processes to ensure compliance and
10 participation.

11 (d) The Department shall retain the services of an advisor
12 or advisors with significant experience in the development,
13 financing, construction, management, or operation of public
14 assets to assist in the preparation of the request for
15 proposals, including an advisor or advisors with significant
16 experience in ensuring the participation of entities subject to
17 the Business Enterprise for Minorities, Females, and Persons
18 with Disabilities Act.

19 (e) The Department shall not include terms in the request
20 for proposals that provide an advantage, whether directly or
21 indirectly, to any contractor presently providing goods,
22 services, or equipment to the Department.

23 (f) The Department shall select at least 2 offerors as
24 finalists. The Department shall submit the offerors'
25 statements of qualification and proposals to the Commission on
26 Government Forecasting and Accountability and the Procurement

1 Policy Board, which shall, within 30 days of the submission,
2 complete a review of the statements of qualification and
3 proposals and, jointly or separately, report on, at a minimum,
4 the satisfaction of the criteria contained in the request for
5 proposals, the qualifications of the offerors, and the value of
6 the proposals to the State. The Department shall not select an
7 offeror as the contractor for the Illiana Expressway project
8 until it has received and considered the findings of the
9 Commission on Government Forecasting and Accountability and
10 the Procurement Policy Board as set forth in their respective
11 reports.

12 (g) Before awarding a public private agreement to an
13 offeror, the Department shall schedule and hold a public
14 hearing or hearings on the proposed public private agreement
15 and publish notice of the hearing or hearings at least 7 days
16 before the hearing and in accordance with Section 4-219 of the
17 Illinois Highway Code. The notice must include the following:

18 (1) the date, time, and place of the hearing and the
19 address of the Department;

20 (2) the subject matter of the hearing;

21 (3) a description of the agreement that may be awarded;

22 and

23 (4) the recommendation that has been made to select an
24 offeror as the contractor for the Illiana Expressway
25 project.

26 At the hearing, the Department shall allow the public to be

1 heard on the subject of the hearing.

2 (h) After the procedures required in this Section have been
3 completed, the Department shall make a determination as to
4 whether the offeror should be designated as the contractor for
5 the Illiana Expressway project and shall submit the decision to
6 the Governor and to the Governor's Office of Management and
7 Budget. After review of the Department's determination, the
8 Governor may accept or reject the determination. If the
9 Governor accepts the determination of the Department, the
10 Governor shall designate the offeror for the Illiana Expressway
11 project.

12 (Source: P.A. 96-913, eff. 6-9-10.)

13 (605 ILCS 130/25)

14 Sec. 25. Provisions of the public private agreement.

15 (a) The public private agreement shall include all of the
16 following:

17 (1) The term of the public private agreement that is
18 consistent with Section 15 of this Act;

19 (2) The powers, duties, responsibilities, obligations,
20 and functions of the Department and the contractor;

21 (3) Compensation or payments to the Department;

22 (4) Compensation or payments to the contractor;

23 (5) A provision specifying that the Department:

24 (A) has ready access to information regarding the
25 contractor's powers, duties, responsibilities,

1 obligations, and functions under the public private
2 agreement;

3 (B) has the right to demand and receive information
4 from the contractor concerning any aspect of the
5 contractor's powers, duties, responsibilities,
6 obligations, and functions under the public private
7 agreement; and

8 (C) has the authority to direct or countermand
9 decisions by the contractor at any time;

10 (6) A provision imposing an affirmative duty on the
11 contractor to provide the Department with any information
12 the contractor reasonably believes the Department would
13 want to know or would need to know to enable the Department
14 to exercise its powers, carry out its duties,
15 responsibilities, and obligations, and perform its
16 functions under this Act or the public private agreement or
17 as otherwise required by law;

18 (7) A provision requiring the contractor to provide the
19 Department with advance notice of any decision that bears
20 significantly on the public interest so the Department has
21 a reasonable opportunity to evaluate and countermand that
22 decision pursuant to this Section;

23 (8) A requirement that the Department monitor and
24 oversee the contractor's practices and take action that the
25 Department considers appropriate to ensure that the
26 contractor is in compliance with the terms of the public

1 private agreement;

2 (9) The authority of the Department to enter into
3 contracts with third parties pursuant to Section 50 of this
4 Act;

5 (10) A provision governing the contractor's authority
6 to negotiate and execute subcontracts with third parties;

7 (10.5) A provision stating that, in the event the
8 contractor finds it necessary, proper, or desirable to
9 enter into subcontracts with one or more design-build
10 entities, then it must follow a selection process that is,
11 to the greatest extent possible, identical to the selection
12 process contained in the Design-Build Procurement Act;

13 (11) The authority of the contractor to impose user
14 fees and the amounts of those fees, including the authority
15 of the contractor to use congestion pricing, pursuant to
16 which higher tolls rates are imposed during times or in
17 locations of increased congestion;

18 (12) A provision governing the deposit and allocation
19 of revenues including user fees;

20 (13) A provision governing rights to real and personal
21 property of the State, the Department, the contractor, and
22 other third parties;

23 (14) A provision stating that the contractor must,
24 pursuant to Section 75 of this Act, finance an independent
25 audit if the construction costs under the contract exceed
26 \$50,000,000;

1 (15) A provision regarding the implementation and
2 delivery of a comprehensive system of internal audits;

3 (16) A provision regarding the implementation and
4 delivery of reports, which must include a requirement that
5 the contractor file with the Department, at least on an
6 annual basis, financial statements containing information
7 required by generally accepted accounting principles
8 (GAAP);

9 (17) Procedural requirements for obtaining the prior
10 approval of the Department when rights that are the subject
11 of the agreement, including but not limited to development
12 rights, construction rights, property rights, and rights
13 to certain revenues, are sold, assigned, transferred, or
14 pledged as collateral to secure financing or for any other
15 reason;

16 (18) Grounds for termination of the agreement by the
17 Department or the contractor and a restatement of the
18 Department's rights under Section 35 of this Act;

19 (19) A requirement that the contractor enter into a
20 project labor agreement pursuant to Section 100 of this
21 Act;

22 (19.5) A provision stating that construction
23 contractors shall comply with the requirements of Section
24 30-22 of the Illinois Procurement Code pursuant to Section
25 100 of this Act;

26 (20) Timelines, deadlines, and scheduling;

1 (21) Review of plans, including development,
2 financing, construction, management, or operations plans,
3 by the Department;

4 (22) Inspections by the Department, including
5 inspections of construction work and improvements;

6 (23) Rights and remedies of the Department in the event
7 that the contractor defaults or otherwise fails to comply
8 with the terms of the agreement;

9 (24) A code of ethics for the contractor's officers and
10 employees; ~~and~~

11 (25) Procedures for amendment to the agreement; ~~-~~

12 (26) Provisions requiring that the contractor
13 undertake specific outreach, sub-contracting, reporting,
14 mentoring, and other measures to promote and ensure the
15 participation of enterprises owned by minorities, females,
16 and persons with disabilities; that the contractor report
17 on its efforts and the result of its efforts directly to
18 the Office of the Governor; and that the contractor pay
19 liquidated damages or other penalties for failure to comply
20 with said provisions; and

21 (27) Provisions requiring that in financing the
22 project by issuing bonds or other financing instruments,
23 the contractor shall, as certified by the Governor's Office
24 of Management and Budget, ensure the participation of
25 emerging investment managers, as defined in Section
26 1-109.1 of the Illinois Pension Code.

1 (b) The public private agreement may include any or all of
2 the following:

3 (1) A provision regarding the extension of the
4 agreement that is consistent with Section 15 of this Act;

5 (2) Cash reserves requirements;

6 (3) Delivery of performance and payment bonds or other
7 performance security in a form and amount that is
8 satisfactory to the Department;

9 (4) Maintenance of public liability insurance;

10 (5) Maintenance of self-insurance;

11 (6) Provisions governing grants and loans, pursuant to
12 which the Department may agree to make grants or loans for
13 the development, financing, construction, management, or
14 operation of the Illiana Expressway project from time to
15 time from amounts received from the federal government or
16 any agency or instrumentality of the federal government or
17 from any State or local agency;

18 (7) Reimbursements to the Department for work
19 performed and goods, services, and equipment provided by
20 the Department; and

21 (8) All other terms, conditions, and provisions
22 acceptable to the Department that the Department deems
23 necessary and proper and in the public interest.

24 (Source: P.A. 96-913, eff. 6-9-10.)

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