



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2981

Introduced 1/5/2022, by Sen. Donald P. DeWitte

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. 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 21866 RAM 30987 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, and may include, but is not limited
26 to, the progressive design-build project delivery method.

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

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

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

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

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

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

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

1 first phase of a Construction Manager/General Contractor
2 contract, and may include, but is not limited to, giving
3 advice to the Transportation Agency regarding scheduling, work
4 sequencing, cost engineering, constructability, cost
5 estimating, and risk identification.

6 "Progressive design-build project delivery method" is a
7 type of design-build project delivery method that consists of
8 2 phases, with the first phase including budget-level design
9 development, preconstruction services, and negotiation of a
10 contract price (either lump sum or guaranteed minimum price).
11 After completion of the first phase, the second phase is
12 begun. The second phase consists of final design,
13 construction, and commissioning of the project.

14 "Proposal" means a proposer's response to a request for
15 proposals.

16 "Proposer" means any individual, sole proprietorship,
17 firm, partnership, joint venture, corporation, professional
18 corporation, or other entity legally established to conduct
19 business in this State that proposes to be the design-builder
20 or Construction Manager/General Contractor for any
21 transportation facility under this Act.

22 "Qualifications" means a statement of qualifications
23 submitted by a proposer in response to a request for
24 qualifications.

25 "Request for proposals" means the document issued by the
26 Transportation Agency to solicit proposals and describe the

1 procurement process for a design-build contract or
2 Construction Manager/General Contractor contract in accordance
3 with the design-build project delivery method or the
4 Construction Manager/General Contractor project delivery
5 method, as applicable.

6 "Request for qualifications" means the document issued by
7 the Transportation Agency in the first phase of a two-phase
8 procurement to solicit qualifications from proposers in
9 accordance with the design-build project delivery method or
10 the Construction Manager/General Contractor project delivery
11 method, as applicable.

12 "Scope and performance requirements" means the activities,
13 constructed elements, and standards of performance the
14 Transportation Agency requires the design-builder or the
15 Construction Manager/General Contractor to comply with in the
16 development of the transportation facility, and may include,
17 but is not limited to, the intended usage, capacity, size,
18 scope, quality and performance standards, life-cycle costs,
19 preliminary engineering, design, and other requirements as
20 developed and determined by the Transportation Agency.

21 "Secretary" means the Secretary of the Illinois Department
22 of Transportation.

23 "Transportation Agency" means the Illinois Department of
24 Transportation or the Illinois State Toll Highway Authority.

25 "Transportation facility" means any new or existing
26 facility or group of facilities that are the subject of a

1 design-build contract or a Construction Manager/General
2 Contractor contract, and includes highways, roads, bridges,
3 tunnels, overpasses, bus ways, guideways, ferries, airports or
4 other aviation facilities, public transportation facilities,
5 vehicle parking facilities, port facilities, rail facilities,
6 stations, hubs, terminals, intermodal facilities, transit
7 facilities, or similar facilities used for the transportation
8 of persons or goods, together with any buildings, structures,
9 parking areas, appurtenances, intelligent transportation
10 systems, and other property or facilities related to the
11 operation or maintenance of these facilities.

12 Section 15. Authorization of project delivery methods.

13 (a) Notwithstanding any other law, and as authority
14 supplemental to its existing powers, the Transportation
15 Agency, in accordance with this Act, may use the design-build
16 project delivery method for transportation facilities if the
17 capital costs for transportation facilities delivered
18 utilizing the design-build project delivery method or
19 Construction Manager/General Contractor project delivery
20 method or Alternative Technical Concepts in a design-bid-build
21 project delivery method do not: (i) for transportation
22 facilities delivered by the Department, exceed \$400 million of
23 contracts awarded during the Department's multi-year highway
24 improvement program for any 5-year period; or (ii) for
25 transportation facilities delivered by the Authority, exceed

1 20% of the Authority's annual improvement program. The
2 Transportation Agency shall make this calculation before
3 commencing the procurement. Notwithstanding any other law, and
4 as authority supplemental to its existing powers, the
5 Department, in accordance with this Act, may use the
6 Construction Manager/General Contractor project delivery
7 method for up to 2 transportation facilities. Before
8 commencing a procurement under this Act for either a
9 design-build contract or a Construction Manager/General
10 Contractor contract, the Transportation Agency shall first
11 undertake an analysis and make a written determination that it
12 is in the best interests of this State to use the selected
13 delivery method for that transportation facility. The analysis
14 and determination shall discuss the design-build project
15 delivery method or Construction Manager/General Contractor
16 project delivery method's impact on the anticipated schedule,
17 completion date, and project costs. The best interests of the
18 State analysis shall be made available to the public.

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

23 Section 20. Preconditions to commencement of procurement.

24 If the Transportation Agency determines to use the
25 design-build project delivery method or the Construction

1 Manager/General Contractor project delivery method for a
2 particular transportation facility, the Transportation Agency
3 may not commence a procurement for the transportation facility
4 until the Transportation Agency has satisfied the following
5 requirements:

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

7 (A) the Transportation Agency includes the
8 transportation facility in the Transportation Agency's
9 respective multi-year highway improvement program and
10 designates it as a design-build project delivery method
11 project or Construction Manager/General Contractor
12 project;

13 (B) the Transportation Agency issues a notice of
14 intent to receive qualifications, that includes a
15 description of the proposed procurement and transportation
16 facility, at least 28 days before the issuance of the
17 request for qualifications, and for a Department-issued
18 notice of intent publishes the notice in the Illinois
19 Transportation Procurement Bulletin and for an
20 Authority-issued notice of intent publishes the notice in
21 the Illinois Procurement Bulletin; or

22 (C) for a single-phase procurement authorized under
23 subsection (a) of Section 25 of this Act, the
24 Transportation Agency issues a notice of intent to receive
25 proposals, that includes a description of the proposed
26 procurement and transportation facility, at least 14 days

1 before the issuance of the request for proposals, and for
2 a Department-issued notice of intent publishes the notice
3 in the Illinois Transportation Procurement Bulletin and
4 for an Authority-issued notice of intent publishes the
5 notice in the Illinois Procurement Bulletin; and

6 (2) the Transportation Agency uses its best efforts to
7 ensure that the transportation facility is consistent with the
8 regional plan in existence at the time of any metropolitan
9 planning organization in which the boundaries of the
10 transportation facility is located, or any other
11 publicly-approved plan.

12 Section 25. Procurement process.

13 (a) The Transportation Agency may solicit a proposer with
14 which to enter into a design-build contract or Construction
15 Manager/General Contractor contract, as applicable, by using,
16 without limitation, one or more requests for qualifications, a
17 shortlisting of the most highly qualified proposers, requests
18 for proposals, and negotiations. The Transportation Agency
19 shall use a two-phase procurement for a design-build contract
20 to select the successful proposer, except that the
21 Transportation Agency may use a single-phase procurement if
22 the transportation facility is estimated to cost less than
23 \$5,000,000 or the Secretary or the Executive Director makes a
24 written determination that the Transportation Agency may use a
25 single-phase procurement for a particular transportation

1 facility. In a two-phase procurement, the Transportation
2 Agency shall use the first phase to evaluate and shortlist the
3 most highly qualified proposers based on a proposer's
4 qualifications, and then use the second phase to evaluate and
5 select a proposer based on proposals submitted by the
6 shortlisted proposers. During the first phase of a two-phase
7 procurement, the Transportation Agency shall not consider
8 price proposals to make its shortlist decision. In a
9 single-phase procurement, the Transportation Agency shall
10 solicit proposers with a request for proposals, and shall
11 evaluate and select a proposer based on those proposals.

12 (b) The request for qualifications may contain any terms
13 deemed appropriate by the Transportation Agency including,
14 without limitation, the following:

15 (1) a description of the anticipated scope of work for
16 the transportation facility;

17 (2) a requirement that the proposer identify certain
18 key personnel, and for design-build contracts certain key
19 firms, the experience of the personnel and firms, and the
20 conditions on which identified personnel and firms can be
21 replaced;

22 (3) the evaluation criteria for the qualifications and
23 the relative importance of those criteria; these
24 evaluation criteria may address, without limitation, the
25 proposer's technical and financial qualifications, such as
26 specialized experience, technical competence, capability

1 to perform, financial capacity, the proposer's workload,
2 local office presence, past performance including the
3 proposer's safety record and record of utilization of
4 business enterprises, including disadvantaged business
5 enterprises, and any other qualifications-based factors;

6 (4) the Transportation Agency's prequalification,
7 licensing, and registration requirements, including any
8 requirements from the Professional Engineering Practice
9 Act of 1989, the Illinois Architecture Practice Act of
10 1989, the Structural Engineering Practice Act of 1989, and
11 the Illinois Professional Land Surveyor Act of 1989,
12 except that nothing contained herein precludes the
13 Transportation Agency's use of additional prequalification
14 criteria or pass-fail evaluation factors addressing
15 minimum levels of technical experience or financial
16 capabilities;

17 (5) a requirement that the proposer provide references
18 or contact information for persons who can attest to the
19 past performance of the proposer, including with respect
20 to successful project delivery, subcontracting, labor
21 relations, diverse business utilization, workforce
22 diversity, and compliance with contract requirements;

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

25 (7) any other relevant information the Transportation
26 Agency deems appropriate.

1 (c) Upon completion of the qualifications evaluation, the
2 Transportation Agency shall, based on the evaluation criteria
3 set forth in the request for qualifications, create a
4 shortlist of the most highly qualified proposers. The
5 Transportation Agency shall shortlist no more than 5 and no
6 fewer than 2 of the most highly qualified proposers.
7 Notwithstanding other provisions of this subsection (c), the
8 Transportation Agency may shortlist fewer than 2 proposers if
9 the Secretary or the Executive Director makes a finding that
10 an emergency situation justifies the limited shortlisting and
11 fewer than 2 proposers meet any applicable prequalification or
12 pass-fail requirements set forth in the request for
13 qualifications.

14 (d) The request for proposals may contain any terms deemed
15 appropriate by the Transportation Agency including, without
16 limitation, the following:

- 17 (1) the form and amount of required bid security;
- 18 (2) the terms of the design-build contract or
19 Construction Manager/General Contractor contract,
20 including, but not limited to, scope and performance
21 requirements, schedule or completion date requirements,
22 subcontractor requirements, payment and performance
23 security requirements, and insurance requirements;
- 24 (3) the requirements for the technical component of
25 the proposal, including a description of the level of
26 design, scope and type of renderings, drawings, and

1 specifications to be provided in the proposals;

2 (4) the requirements for the price component of the
3 proposal, which for Construction Manager/General
4 Contractor contracts may include a requirement for the
5 proposer to submit a lump sum price for the direct costs to
6 perform the required preconstruction services and
7 percentage mark-up on those direct costs;

8 (5) the evaluation criteria for the proposals,
9 including technical criteria, innovation, and schedule,
10 and the relative importance of those criteria, as the
11 Transportation Agency deems appropriate;

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

14 (7) requirements regarding utilization of business
15 enterprises, including disadvantaged business
16 enterprises, and workforce development, including a
17 description of utilization and workforce diversity plans
18 and certifications to be provided in the proposals;

19 (8) requirements regarding the proposer's
20 qualifications; and

21 (9) any other relevant information the Transportation
22 Agency deems appropriate.

23 (e) Before the proposers' submittal of proposals, the
24 Transportation Agency may conduct confidential meetings and
25 exchange confidential information with proposers to promote
26 understanding of the request for proposals, review Alternative

1 Technical Concepts, or discuss other issues related to the
2 procurement.

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

6 (g) The Transportation Agency may offer to pay a stipend
7 in an amount and on the terms and conditions determined by the
8 Transportation Agency and as set forth in the request for
9 proposals to: (1) all shortlisted proposers if the
10 Transportation Agency cancels the procurement before the due
11 date for proposals; or (2) each unsuccessful proposer that
12 submits a responsive proposal; or (3) each member of the
13 proposer team that incurs costs in the preparation of the
14 proposal. The Transportation Agency may pay a stipend only to
15 those proposers who grant to the Transportation Agency the
16 right to use any work product contained in the unsuccessful
17 proposer's proposal and other proposal-related submissions or,
18 if the Transportation Agency cancels the procurement before
19 the due date for proposals, any work product developed before
20 cancellation, including technologies, techniques, methods,
21 processes, and information contained in the recipient's design
22 for the transportation facility.

23 (h) The Transportation Agency shall, as appropriate
24 depending on whether the transportation facility includes
25 building facilities, directly employ or retain a professional
26 engineer or engineers licensed in this State or a licensed

1 architect or architects, or both engineers licensed in this
2 State and licensed architects, to prepare the scope and assist
3 in the evaluation of the proposals' technical submissions
4 under a design-build project delivery method. The professional
5 engineers and licensed architects performing these services
6 are generally precluded from participating in the procurement
7 of the transportation facility at issue as a member of a
8 proposer team.

9 (i) The Transportation Agency has the right to reject any
10 and all qualifications or proposals, including, but not
11 limited to, the right to reject any qualifications or
12 proposals as non-responsive, if, in the Transportation
13 Agency's sole discretion, the qualifications or proposals do
14 not meet all material requirements of the request for
15 qualifications or request for proposals, as appropriate. The
16 Transportation Agency shall not consider a proposal that does
17 not include:

18 (1) the proposer's plan to comply with requirements
19 established by the Transportation Agency regarding
20 utilization of business enterprises, including
21 disadvantaged business enterprises; or

22 (2) bid security in the form and amount designated in
23 the request for proposals.

24 (j) The Transportation Agency shall consult with the
25 appropriate chief procurement officer on the design-build
26 project delivery method and the Construction Manager/General

1 Contractor project delivery method procurement processes, and
2 the Secretary or the Executive Director, in consultation with
3 the chief procurement officer, shall determine which
4 procedures to adopt and apply to the design-build project
5 delivery method and Construction Manager/General Contractor
6 project delivery method procurement processes in order to
7 ensure an open, transparent, and efficient process that
8 accomplishes the purposes of this Act.

9 (k) To ensure taxpayer accountability, the Transportation
10 Agency shall independently procure an owner's representative
11 or construction manager to provide design reviews,
12 constructability reviews, value engineering, construction
13 acceptance, oversight of utility relocations, stakeholder
14 coordination, independent quality assurance surveys,
15 independent material testing, documentation of construction,
16 public involvement management, risk mitigation, and oversight
17 of construction activities including construction management,
18 maintenance of traffic, and permit compliance. The firm must
19 be prequalified in Construction Inspection. The payment for
20 this work would be based on a lump sum method of compensation.

21 Section 30. Evaluation committee.

22 (a) The Transportation Agency shall establish one or more
23 evaluation committees to assist in selecting a design-builder
24 and a Construction Manager/General Contractor. The
25 Transportation Agency, in its sole discretion, shall determine

1 the appropriate size and composition of the evaluation
2 committee; however, at least half of the committee must be
3 licensed design professionals.

4 (b) The Transportation Agency may establish an evaluation
5 committee for a set term or for the procurement of a particular
6 transportation facility.

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

17 Section 35. Procedures for selection.

18 (a) The Transportation Agency shall review, evaluate,
19 score, and rank proposals and determine which proposal offers
20 the best value to the public based on the evaluation criteria
21 set forth in the request for proposals. The Transportation
22 Agency shall award the contract based on this determination.
23 Notwithstanding other provisions of this Section, if for any
24 reason the proposer awarded the contract is unable or
25 unwilling to execute the contract, including the failure of

1 the proposer and the Transportation Agency to successfully
2 complete negotiations, if any, of the contract, the
3 Transportation Agency may award the contract to the proposer
4 whose proposal the Transportation Agency determines offers the
5 public the next best value.

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

12 Section 40. Project records; confidentiality; public
13 disclosure.

14 (a) The Transportation Agency shall maintain all written
15 decisions, qualification and proposal evaluations, scoring
16 documents, selection evaluations, proposals, and procurement
17 documents in a procurement file maintained by the
18 Transportation Agency.

19 (b) A proposer may identify those portions of a proposal
20 or other submission that the proposer considers to be trade
21 secrets or confidential, commercial, financial, or proprietary
22 information. Confidential and proprietary information,
23 including trade secrets, shall be exempt from disclosure only
24 if the proposer does the following:

25 (1) requests exclusion from disclosure upon submission

1 of the information or other materials for which protection
2 is sought;

3 (2) identifies the data or other materials for which
4 protection is sought;

5 (3) states the statutory or regulatory basis for the
6 protection;

7 (4) fully complies with the federal Freedom of
8 Information Act and any other applicable provisions of
9 State law, including, but not limited to, the Freedom of
10 Information Act, with respect to information the proposer
11 contends should be exempt from disclosure; and

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

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

1 design-build contract or Construction Manager/General
2 Contractor contract, as applicable. However, this exemption
3 shall lapse if the Transportation Agency does not commence the
4 re-procurement of the transportation facility within 5 years
5 of the termination.

6 Section 45. Design-build contract. A design-build contract
7 may include any provisions the Transportation Agency
8 determines are necessary or appropriate, including, but not
9 limited to, provisions regarding the following:

- 10 (1) compensation or payments to the design-builder;
- 11 (2) grounds for termination of the design-build
12 contract, including the Transportation Agency's right to
13 terminate for convenience;
- 14 (3) liability for damages and nonperformance;
- 15 (4) events of default and the rights and remedies
16 available to the design-builder and the Transportation
17 Agency in the event of a default or delay;
- 18 (5) the identification of any technical specifications
19 that the design-builder must comply with when developing
20 plans or performing construction work;
- 21 (6) the procedures for review and approval of the
22 design-builder's plans;
- 23 (7) required performance and payment security;
- 24 (8) the terms and conditions of indemnification and
25 minimum insurance requirements; and

1 (9) any other terms and conditions the Transportation
2 Agency deems necessary.

3 Section 50. Construction Manager/General Contractor
4 contract.

5 (a) The Construction Manager/General Contractor contract
6 shall divide the Construction Manager/General Contractor
7 services into 2 phases. The first phase shall address
8 preconstruction services and the procedures the parties shall
9 follow to finalize the contract terms for the second phase.
10 The second phase shall address the Construction
11 Manager/General Contractor's construction of the
12 transportation facility for a lump sum or a guaranteed maximum
13 price.

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

16 (1) the Construction Manager/General Contractor's
17 provision of preconstruction services during the first
18 phase of the contract, including the Construction
19 Manager/General Contractor's compensation for those
20 services;

21 (2) a requirement that, during the first phase of the
22 contract, the Construction Manager/General Contractor
23 shall use a competitive bidding process to procure
24 subcontracts for at least the minimum percentage of
25 construction work specified in the request for proposals,

1 provided that:

2 (A) compliance with this requirement shall be
3 based on an estimated cost for the construction work
4 approved by the Transportation Agency before the start
5 of the competitive bidding process; and

6 (B) the Construction Manager/General Contractor
7 may not use subcontracts with its wholly or partially
8 owned subsidiaries, parent companies, or affiliates to
9 satisfy this obligation;

10 (3) the process the Transportation Agency and the
11 Construction Manager/General Contractor shall use to
12 determine a lump sum or guaranteed maximum price for the
13 construction work, including a requirement that the
14 Transportation Agency conduct an independent cost estimate
15 for the construction work; and

16 (4) grounds for termination of the Construction
17 Manager/General Contractor contract, including the
18 Transportation Agency's right to terminate the contract
19 and not proceed with the construction phase of the project
20 if the Transportation Agency and the Construction
21 Manager/General Contractor are unable to negotiate a lump
22 sum or guaranteed maximum price for the construction work.

23 (c) In addition to the provisions under subsection (b) of
24 this Section, a Construction Manager/General Contractor
25 contract may include any other provisions the Transportation
26 Agency determines are necessary or appropriate, including, but

1 not limited to, provisions regarding the following:

2 (1) liability for damages and nonperformance;

3 (2) events of default and the rights and remedies
4 available to the Construction Manager/General Contractor
5 and the Transportation Agency in the event of a default or
6 delay;

7 (3) the identification of any technical specifications
8 that the Construction Manager/General Contractor must
9 comply with when aiding the Transportation Agency with
10 developing plans or performing construction work;

11 (4) required performance and payment security for the
12 construction phase of the contract;

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

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

17 (d) If the Construction Manager/General Contractor
18 contract is terminated for any reason, the Transportation
19 Agency, in its sole discretion, may readvertise the
20 Construction Manager/General Contractor contract under this
21 Act or use any other authorized procurement method to complete
22 the transportation facility or any portion of the
23 transportation facility. Once the contract is terminated, the
24 Transportation Agency may use any work product developed by
25 the Construction Manager/General Contractor to complete the
26 transportation facility.

1 Section 55. Funding and financing.

2 (a) The Transportation Agency may use any lawful source of
3 funding and financing to compensate a design-builder and
4 Construction Manager/General Contractor for work and services
5 performed under a design-build contract or Construction
6 Manager/General Contractor contract, as applicable, and the
7 Transportation Agency may combine federal, State, local, and
8 private funds to finance a transportation facility.

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

14 Section 56. Utilization requirements.

15 (a) Design-builder and Construction Manager/General
16 Contractor projects shall comply with Section 2-105 of the
17 Illinois Human Rights Act and all applicable laws and rules
18 that establish standards and procedures for the utilization of
19 minority, disadvantaged, and women-owned businesses,
20 including, but not limited to, the Business Enterprise for
21 Minorities, Women, and Persons with Disabilities Act. Each
22 design-build contract and Construction Manager/General
23 Contractor contract shall include remedies for a contractor's
24 failure to comply with commitments made in the proposal or

1 utilization plan, including, without limitation, failure to
2 cooperate in providing information regarding compliance or
3 termination of any subcontractor identified in the utilization
4 plan without the consent of the Transportation Agency. Such
5 remedies may include termination of the contract, imposition
6 of a penalty in an amount equivalent to any profit or cost
7 savings accruing to the contractor as a result of the
8 violation, or any other remedy available to the Transportation
9 Agency at law or in equity.

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

24 Section 57. Labor.

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

1 the design-builder or Construction Manager/General Contractor,
2 and all subcontractors, to comply with Section 30-22 of the
3 Illinois Procurement Code as it applies to responsible bidders
4 and to present satisfactory evidence of that compliance to the
5 Transportation Agency, unless the transportation project is
6 federally funded and the application of those requirements
7 would jeopardize the receipt or use of federal funds in
8 support of the transportation project.

9 (b) A contract or agreement under this Act shall require
10 the design-builder or Construction Manager/General Contractor
11 to enter into a project labor agreement used by the
12 Transportation Agency.

13 (c) This Section does not apply to construction-related
14 professional services. As used in this Section,
15 "construction-related professional services" means those
16 services within the scope of the practice of architecture,
17 professional engineering, structural engineering, or land
18 surveying, as defined in the Illinois Architecture Practice
19 Act of 1989, the Professional Engineering Practice Act of
20 1989, the Illinois Professional Land Surveyor Act of 1989, or
21 the Illinois Structural Engineering Practice Act of 1989.

22 Section 60. Acquisition of property and related
23 agreements. The Transportation Agency may exercise any and all
24 powers of condemnation or eminent domain, including quick-take
25 powers, to acquire lands or estates or interests in land for a

1 transportation facility under this Act to the extent the
2 Transportation Agency finds that the action serves the public
3 purpose of this Act and deems the action appropriate in the
4 exercise of its powers under this Act. In addition, the
5 Transportation Agency and a design-builder or Construction
6 Manager/General Contractor may enter into leases, licenses,
7 easements, and other grants of property interests that the
8 Transportation Agency determines are necessary to deliver a
9 transportation facility under this Act.

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

16 Section 70. Powers. The powers granted to the
17 Transportation Agency under this Act, including the power to
18 procure and enter into design-build contracts and Construction
19 Manager/General Contractor contracts, shall be liberally
20 construed to accomplish its purpose, are in addition to any
21 existing powers of the Transportation Agency, and shall not
22 affect or impair any other powers authorized under applicable
23 law.

1 Section 75. Rulemaking.

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

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

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

12 Section 905. The Department of Transportation Law of the
13 Civil Administrative Code of Illinois is amended by adding
14 Section 2705-233 as follows:

15 (20 ILCS 2705/2705-233 new)

16 Sec. 2705-233. Innovations for Transportation
17 Infrastructure Act. The Department may exercise all powers
18 granted to it under the Innovations for Transportation
19 Infrastructure Act, including, but not limited to, the power
20 to enter into all contracts or agreements necessary or
21 incidental to the performance of its powers under that Act,
22 and powers related to any transportation facility implemented
23 under that Act.

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

3 (20 ILCS 3501/825-108 new)

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

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

13 (30 ILCS 500/1-10.5 new)

14 Sec. 1-10.5. Alternative Technical Concepts.

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

19 (b) Notwithstanding subsection (b) of Section 1-10 of this
20 Code, the Department of Transportation may allow bidders and
21 proposers to submit Alternative Technical Concepts in their
22 bids and proposals, if the Department determines that the

1 Alternative Technical Concepts provide an equal or better
2 solution than the underlying technical requirements applicable
3 to the work. Notwithstanding the foregoing, for projects the
4 Department delivers using the design-bid-build project
5 delivery method, the Department shall use the Alternative
6 Technical Concepts process for no more than 3 projects. If the
7 Department allows bidders or proposers for a particular
8 contract to submit Alternative Technical Concepts, the
9 Department shall describe the process for submission and
10 evaluation of Alternative Technical Concepts in the
11 procurement documents for that contract, including the
12 potential use of confidential meetings and the exchange of
13 confidential information with bidders and proposers to review
14 and discuss potential or proposed Alternative Technical
15 Concepts.

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

18 (30 ILCS 550/1.9 new)

19 Sec. 1.9. Design-build contracts and Construction
20 Manager/General Contractor contracts. This Act applies to any
21 design-build contract or Construction Manager/General
22 Contractor contract entered into under the Innovations for
23 Transportation Infrastructure Act.

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

3 (30 ILCS 570/2.8 new)

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

9 Section 930. The Business Enterprise for Minorities,
10 Women, and Persons with Disabilities Act is amended by adding
11 Section 2.8 as follows:

12 (30 ILCS 575/2.8 new)

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

18 Section 935. The Toll Highway Act is amended by adding
19 Section 11.2 as follows:

20 (605 ILCS 10/11.2 new)

21 Sec. 11.2. Innovations for Transportation Infrastructure

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

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

9 (735 ILCS 30/15-5-48 new)

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

13 The Innovations for Transportation Infrastructure Act; for
14 the purposes of constructing a transportation facility under
15 the Act.

16 Section 945. The Prevailing Wage Act is amended by
17 changing Section 2 as follows:

18 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

19 Sec. 2. This Act applies to the wages of laborers,
20 mechanics and other workers employed in any public works, as
21 hereinafter defined, by any public body and to anyone under
22 contracts for public works. This includes any maintenance,

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

3 As used in this Act, unless the context indicates
4 otherwise:

5 "Public works" means all fixed works constructed or
6 demolished by any public body, or paid for wholly or in part
7 out of public funds. "Public works" as defined herein includes
8 all projects financed in whole or in part with bonds, grants,
9 loans, or other funds made available by or through the State or
10 any of its political subdivisions, including but not limited
11 to: bonds issued under the Industrial Project Revenue Bond Act
12 (Article 11, Division 74 of the Illinois Municipal Code), the
13 Industrial Building Revenue Bond Act, the Illinois Finance
14 Authority Act, the Illinois Sports Facilities Authority Act,
15 or the Build Illinois Bond Act; loans or other funds made
16 available pursuant to the Build Illinois Act; loans or other
17 funds made available pursuant to the Riverfront Development
18 Fund under Section 10-15 of the River Edge Redevelopment Zone
19 Act; or funds from the Fund for Illinois' Future under Section
20 6z-47 of the State Finance Act, funds for school construction
21 under Section 5 of the General Obligation Bond Act, funds
22 authorized under Section 3 of the School Construction Bond
23 Act, funds for school infrastructure under Section 6z-45 of
24 the State Finance Act, and funds for transportation purposes
25 under Section 4 of the General Obligation Bond Act. "Public
26 works" also includes (i) all projects financed in whole or in

1 part with funds from the Environmental Protection Agency under
2 the Illinois Renewable Fuels Development Program Act for which
3 there is no project labor agreement; (ii) all work performed
4 pursuant to a public private agreement under the Public
5 Private Agreements for the Illiana Expressway Act or the
6 Public-Private Agreements for the South Suburban Airport Act;
7 ~~and~~ (iii) all projects undertaken under a public-private
8 agreement under the Public-Private Partnerships for
9 Transportation Act; and (iv) all transportation facilities
10 undertaken under a design-build contract or a Construction
11 Manager/General Contractor contract under the Innovations for
12 Transportation Infrastructure Act. "Public works" also
13 includes all projects at leased facility property used for
14 airport purposes under Section 35 of the Local Government
15 Facility Lease Act. "Public works" also includes the
16 construction of a new wind power facility by a business
17 designated as a High Impact Business under Section
18 5.5(a)(3)(E) of the Illinois Enterprise Zone Act. "Public
19 works" does not include work done directly by any public
20 utility company, whether or not done under public supervision
21 or direction, or paid for wholly or in part out of public
22 funds. "Public works" also includes construction projects
23 performed by a third party contracted by any public utility,
24 as described in subsection (a) of Section 2.1, in public
25 rights-of-way, as defined in Section 21-201 of the Public
26 Utilities Act, whether or not done under public supervision or

1 direction, or paid for wholly or in part out of public funds.
2 "Public works" also includes construction projects that exceed
3 15 aggregate miles of new fiber optic cable, performed by a
4 third party contracted by any public utility, as described in
5 subsection (b) of Section 2.1, in public rights-of-way, as
6 defined in Section 21-201 of the Public Utilities Act, whether
7 or not done under public supervision or direction, or paid for
8 wholly or in part out of public funds. "Public works" also
9 includes any corrective action performed pursuant to Title XVI
10 of the Environmental Protection Act for which payment from the
11 Underground Storage Tank Fund is requested. "Public works"
12 does not include projects undertaken by the owner at an
13 owner-occupied single-family residence or at an owner-occupied
14 unit of a multi-family residence. "Public works" does not
15 include work performed for soil and water conservation
16 purposes on agricultural lands, whether or not done under
17 public supervision or paid for wholly or in part out of public
18 funds, done directly by an owner or person who has legal
19 control of those lands.

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

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

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

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

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

23 The terms "general prevailing rate of hourly wages",
24 "general prevailing rate of wages" or "prevailing rate of
25 wages" when used in this Act mean the hourly cash wages plus
26 annualized fringe benefits for training and apprenticeship

1 programs approved by the U.S. Department of Labor, Bureau of
2 Apprenticeship and Training, health and welfare, insurance,
3 vacations and pensions paid generally, in the locality in
4 which the work is being performed, to employees engaged in
5 work of a similar character on public works.

6 (Source: P.A. 102-9, eff. 1-1-22; 102-444, eff. 8-20-21;
7 revised 9-23-21.)

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

10 Section 999. Effective date. This Act takes effect upon
11 becoming law.