

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) Except as otherwise provided in this Act, the powers
7 granted in this Act are in addition to any other powers
8 authorized under applicable law.

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

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

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

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

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

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

1 "Construction Manager/General Contractor contract" means a
2 two-phase contract between the Transportation Agency and a
3 Construction Manager/General Contractor that includes a first
4 phase addressing preconstruction services and a second phase
5 addressing the construction of the transportation facility.

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

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

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

22 "Design-build contract" means a contract between the
23 Transportation Agency and a design-builder under which the
24 design-builder agrees to furnish architectural, surveying,
25 engineering, construction, and related services for a
26 transportation facility, and may include, but is not limited

1 to, the progressive design-build project delivery method.

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

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

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

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

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

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

25 "Preconstruction services" means all
26 non-construction-related services that a Construction

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

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

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

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

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

26 "Request for proposals" means the document issued by the

1 Transportation Agency to solicit proposals and describe the
2 procurement process for a design-build contract or
3 Construction Manager/General Contractor contract in accordance
4 with the design-build project delivery method or the
5 Construction Manager/General Contractor project delivery
6 method, as applicable.

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

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

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

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

26 "Transportation facility" means any new or existing

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

13 Section 15. Authorization of project delivery methods.

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

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

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

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

1 Section 20. Preconditions to commencement of procurement.

2 If the Transportation Agency determines to use the
3 design-build project delivery method or the Construction
4 Manager/General Contractor project delivery method for a
5 particular transportation facility, the Transportation Agency
6 may not commence a procurement for the transportation facility
7 until the Transportation Agency has satisfied the following
8 requirements:

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

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

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

25 (C) for a single-phase procurement authorized under

1 subsection (a) of Section 25 of this Act, the
2 Transportation Agency issues a notice of intent to receive
3 proposals, that includes a description of the proposed
4 procurement and transportation facility, at least 14 days
5 before the issuance of the request for proposals, and for
6 a Department-issued notice of intent publishes the notice
7 in the Illinois Transportation Procurement Bulletin and
8 for an Authority-issued notice of intent publishes the
9 notice in the Illinois Procurement Bulletin; and

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

16 Section 25. Procurement process.

17 (a) The Transportation Agency may solicit a proposer with
18 which to enter into a design-build contract or Construction
19 Manager/General Contractor contract, as applicable, by using,
20 without limitation, one or more requests for qualifications, a
21 shortlisting of the most highly qualified proposers, requests
22 for proposals, and negotiations. The Transportation Agency
23 shall use a two-phase procurement for a design-build contract
24 to select the successful proposer, except that the
25 Transportation Agency may use a single-phase procurement if

1 the transportation facility is estimated to cost less than
2 \$5,000,000 or the Secretary or the Executive Director makes a
3 written determination that the Transportation Agency may use a
4 single-phase procurement for a particular transportation
5 facility. In a two-phase procurement, the Transportation
6 Agency shall use the first phase to evaluate and shortlist the
7 most highly qualified proposers based on a proposer's
8 qualifications, and then use the second phase to evaluate and
9 select a proposer based on proposals submitted by the
10 shortlisted proposers. During the first phase of a two-phase
11 procurement, the Transportation Agency shall not consider
12 price proposals to make its shortlist decision. In a
13 single-phase procurement, the Transportation Agency shall
14 solicit proposers with a request for proposals, and shall
15 evaluate and select a proposer based on those proposals.

16 (b) The request for qualifications may contain any terms
17 deemed appropriate by the Transportation Agency including,
18 without limitation, the following:

19 (1) a description of the anticipated scope of work for
20 the transportation facility;

21 (2) a requirement that the proposer identify certain
22 key personnel, and for design-build contracts certain key
23 firms, the experience of the personnel and firms, and the
24 conditions on which identified personnel and firms can be
25 replaced;

26 (3) the evaluation criteria for the qualifications and

1 the relative importance of those criteria; these
2 evaluation criteria may address, without limitation, the
3 proposer's technical and financial qualifications, such as
4 specialized experience, technical competence, capability
5 to perform, financial capacity, the proposer's workload,
6 local office presence, past performance including the
7 proposer's safety record and record of utilization of
8 business enterprises, including disadvantaged business
9 enterprises, and any other qualifications-based factors;

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

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

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

3 (7) any other relevant information the Transportation
4 Agency deems appropriate.

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

18 (d) The request for proposals may contain any terms deemed
19 appropriate by the Transportation Agency including, without
20 limitation, the following:

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

22 (2) the terms of the design-build contract or
23 Construction Manager/General Contractor contract,
24 including, but not limited to, scope and performance
25 requirements, schedule or completion date requirements,
26 subcontractor requirements, payment and performance

1 security requirements, and insurance requirements;

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

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

12 (5) the evaluation criteria for the proposals,
13 including technical criteria, innovation, and schedule,
14 and the relative importance of those criteria, as the
15 Transportation Agency deems appropriate;

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

18 (7) requirements regarding utilization of business
19 enterprises, including disadvantaged business
20 enterprises, and workforce development, including a
21 description of utilization and workforce diversity plans
22 and certifications to be provided in the proposals for
23 both design and construction phases;

24 (8) requirements regarding the proposer's
25 qualifications; and

26 (9) any other relevant information the Transportation

1 Agency deems appropriate.

2 (e) Before the proposers' submittal of proposals, the
3 Transportation Agency may conduct confidential meetings and
4 exchange confidential information with proposers to promote
5 understanding of the request for proposals, review Alternative
6 Technical Concepts, or discuss other issues related to the
7 procurement.

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

11 (g) The Transportation Agency may offer to pay a stipend
12 in an amount and on the terms and conditions determined by the
13 Transportation Agency and as set forth in the request for
14 proposals to: (1) all shortlisted proposers if the
15 Transportation Agency cancels the procurement after the
16 proposals have been released, but before the due date for
17 proposals; or (2) each unsuccessful proposer that submits a
18 responsive proposal; or (3) each member of the proposer team
19 that incurs costs in the preparation of the proposal. The
20 Transportation Agency may pay a stipend only to those
21 proposers who grant to the Transportation Agency the right to
22 use any work product contained in the unsuccessful proposer's
23 proposal and other proposal-related submissions or, if the
24 Transportation Agency cancels the procurement after the
25 proposals have been released, but before the due date for
26 proposals, any work product developed before cancellation,

1 including technologies, techniques, methods, processes, and
2 information contained in the recipient's design for the
3 transportation facility.

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

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

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

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

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

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

16 (k) To ensure taxpayer accountability, for any project
17 with an estimated cost over \$30,000,000, the Transportation
18 Agency shall independently procure an owner's representative
19 or construction manager to supplement staff directly employed
20 by the Transportation Agency, provide design reviews,
21 constructability reviews, construction acceptance, oversight
22 of utility relocations, independent quality assurance surveys,
23 independent material testing, documentation of construction,
24 risk mitigation, and oversight of construction activities,
25 including construction management, maintenance of traffic,
26 permit compliance, and other services which may include: value

1 engineering, stakeholder coordination, or public involvement
2 management.

3 Section 30. Evaluation committee.

4 (a) The Transportation Agency shall establish one or more
5 evaluation committees to assist in selecting a design-builder
6 and a Construction Manager/General Contractor. The
7 Transportation Agency, in its sole discretion, shall determine
8 the appropriate size and composition of the evaluation
9 committee; however, at least half of the committee must be
10 licensed professional engineers.

11 (b) The Transportation Agency may establish an evaluation
12 committee for a set term or for the procurement of a particular
13 transportation facility.

14 (c) Once the Transportation Agency identifies the
15 proposers for a transportation facility, each member of an
16 evaluation committee must certify that no conflict of interest
17 exists between the member and the proposers. If the
18 Transportation Agency, after consultation with the chief
19 procurement officer, determines that an actual conflict
20 exists, the member shall not participate on the evaluation
21 committee for that procurement and the Transportation Agency
22 shall appoint a replacement member on either a permanent or a
23 temporary basis.

24 Section 35. Procedures for selection.

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

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

20 Section 40. Project records; confidentiality; public
21 disclosure.

22 (a) The Transportation Agency shall maintain all written
23 decisions, qualification and proposal evaluations, scoring
24 documents, selection evaluations, proposals, and procurement
25 documents in a procurement file maintained by the

1 Transportation Agency.

2 (b) A proposer may identify those portions of a proposal
3 or other submission that the proposer considers to be trade
4 secrets or confidential, commercial, financial, or proprietary
5 information. Confidential and proprietary information,
6 including trade secrets, shall be exempt from disclosure only
7 if the proposer does the following:

8 (1) requests exclusion from disclosure upon submission
9 of the information or other materials for which protection
10 is sought;

11 (2) identifies the data or other materials for which
12 protection is sought;

13 (3) states the statutory or regulatory basis for the
14 protection;

15 (4) fully complies with the federal Freedom of
16 Information Act and any other applicable provisions of
17 State law, including, but not limited to, the Freedom of
18 Information Act, with respect to information the proposer
19 contends should be exempt from disclosure; and

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

22 (c) Notwithstanding any other provision of law, in order
23 to properly balance the need to maximize competition under
24 this Act with the need to create a transparent procurement
25 process, the qualifications, proposals, and other information
26 and documents submitted by proposers and the Transportation

1 Agency's evaluation records shall not be subject to release or
2 disclosure by the Transportation Agency until execution of the
3 design-build contract or Construction Manager/General
4 Contractor contract, as applicable. If the Transportation
5 Agency terminates the procurement for a transportation
6 facility, the exemption from release or disclosure under this
7 Section shall remain in place until the Transportation Agency
8 re-procures the transportation facility and has entered into a
9 design-build contract or Construction Manager/General
10 Contractor contract, as applicable. However, this exemption
11 shall lapse if the Transportation Agency does not commence the
12 re-procurement of the transportation facility within 5 years
13 of the termination.

14 Section 45. Design-build contract. A design-build contract
15 may include any provisions the Transportation Agency
16 determines are necessary or appropriate, including, but not
17 limited to, provisions regarding the following:

- 18 (1) compensation or payments to the design-builder;
- 19 (2) grounds for termination of the design-build
20 contract, including the Transportation Agency's right to
21 terminate for convenience;
- 22 (3) liability for damages and nonperformance;
- 23 (4) events of default and the rights and remedies
24 available to the design-builder and the Transportation
25 Agency in the event of a default or delay;

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

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

6 (7) required performance and payment security;

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

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

11 Section 50. Construction Manager/General Contractor
12 contract.

13 (a) The Construction Manager/General Contractor contract
14 shall divide the Construction Manager/General Contractor
15 services into 2 phases. The first phase shall address
16 preconstruction services and the procedures the parties shall
17 follow to finalize the contract terms for the second phase.
18 The second phase shall address the Construction
19 Manager/General Contractor's construction of the
20 transportation facility for a lump sum or a guaranteed maximum
21 price.

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

24 (1) the Construction Manager/General Contractor's
25 provision of preconstruction services during the first

1 phase of the contract, including the Construction
2 Manager/General Contractor's compensation for those
3 services;

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

10 (A) compliance with this requirement shall be
11 based on an estimated cost for the construction work
12 approved by the Transportation Agency before the start
13 of the competitive bidding process; and

14 (B) the Construction Manager/General Contractor
15 may not use subcontracts with its wholly or partially
16 owned subsidiaries, parent companies, or affiliates to
17 satisfy this obligation;

18 (3) the process the Transportation Agency and the
19 Construction Manager/General Contractor shall use to
20 determine a lump sum or guaranteed maximum price for the
21 construction work, including a requirement that the
22 Transportation Agency conduct an independent cost estimate
23 for the construction work; and

24 (4) grounds for termination of the Construction
25 Manager/General Contractor contract, including the
26 Transportation Agency's right to terminate the contract

1 and not proceed with the construction phase of the project
2 if the Transportation Agency and the Construction
3 Manager/General Contractor are unable to negotiate a lump
4 sum or guaranteed maximum price for the construction work.

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

10 (1) liability for damages and nonperformance;

11 (2) events of default and the rights and remedies
12 available to the Construction Manager/General Contractor
13 and the Transportation Agency in the event of a default or
14 delay;

15 (3) the identification of any technical specifications
16 that the Construction Manager/General Contractor must
17 comply with when aiding the Transportation Agency with
18 developing plans or performing construction work;

19 (4) required performance and payment security for the
20 construction phase of the contract;

21 (5) the terms and conditions of indemnification and
22 minimum insurance requirements; and

23 (6) any other terms and conditions the Transportation
24 Agency deems necessary.

25 (d) If the Construction Manager/General Contractor
26 contract is terminated for any reason, the Transportation

1 Agency, in its sole discretion, may readvertise the
2 Construction Manager/General Contractor contract under this
3 Act or use any other authorized procurement method to complete
4 the transportation facility or any portion of the
5 transportation facility. Once the contract is terminated, the
6 Transportation Agency may use any work product developed by
7 the Construction Manager/General Contractor to complete the
8 transportation facility.

9 Section 55. Funding and financing.

10 (a) The Transportation Agency may use any lawful source of
11 funding and financing to compensate a design-builder and
12 Construction Manager/General Contractor for work and services
13 performed under a design-build contract or Construction
14 Manager/General Contractor contract, as applicable, and the
15 Transportation Agency may combine federal, State, local, and
16 private funds to finance a transportation facility. Any
17 Transportation Agency that administers a construction program
18 for which federal law or regulations establish standards and
19 procedures for the utilization of minority-owned and
20 women-owned businesses and disadvantaged businesses shall
21 implement a disadvantaged business enterprise program to
22 include minority-owned and women-owned businesses and
23 disadvantaged businesses, using the federal standards and
24 procedures for the establishment of goals and utilization
25 procedures for the State-funded, as well as the federally

1 assisted, portions of the program. In cases of federal funding
2 or federally assisted projects, these goals shall not exceed
3 those established pursuant to the relevant and applicable
4 federal statutes or regulations.

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

10 Section 56. Utilization requirements.

11 (a) Design-builder and Construction Manager/General
12 Contractor projects shall comply with Section 2-105 of the
13 Illinois Human Rights Act and all applicable laws and rules
14 that establish standards and procedures for the utilization of
15 minority, disadvantaged, and women-owned businesses,
16 including, but not limited to, the Business Enterprise for
17 Minorities, Women, and Persons with Disabilities Act. Any
18 Transportation Agency that administers a construction program,
19 for which federal law or regulations establish standards and
20 procedures for the utilization of minority-owned and
21 women-owned businesses and disadvantaged businesses shall
22 implement a disadvantaged business enterprise program to
23 include minority-owned and women-owned businesses and
24 disadvantaged businesses, using the federal standards and
25 procedures for the establishment of goals and utilization

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

19 (b) For the purposes of this Section, aspirational goals
20 compliant with the Business Enterprise for Minorities, Women,
21 and Persons with Disabilities Act and Disadvantaged Business
22 Enterprise Program shall be established separately for
23 construction-related professional services and shall be
24 consistent with the Transportation Agency's methodology for
25 design-bid-build contracts. As used in this Section,
26 "construction-related professional services" means those

1 services within the scope of the practice of architecture,
2 professional engineering, structural engineering, or land
3 surveying, as defined in the Illinois Architecture Practice
4 Act of 1989, the Professional Engineering Practice Act of
5 1989, the Illinois Professional Land Surveyor Act of 1989, or
6 the Illinois Structural Engineering Practice Act of 1989.

7 Section 57. Labor.

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

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

21 (c) This Section does not apply to construction-related
22 professional services. As used in this Section,
23 "construction-related professional services" means those
24 services within the scope of the practice of architecture,
25 professional engineering, structural engineering, or land

1 surveying, as defined in the Illinois Architecture Practice
2 Act of 1989, the Professional Engineering Practice Act of
3 1989, the Illinois Professional Land Surveyor Act of 1989, or
4 the Illinois Structural Engineering Practice Act of 1989.

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

19 Section 60. Acquisition of property and related
20 agreements. The Transportation Agency may exercise any and all
21 powers of condemnation or eminent domain, including quick-take
22 powers, to acquire lands or estates or interests in land for a
23 transportation facility under this Act to the extent the
24 Transportation Agency finds that the action serves the public

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

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

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

22 Section 75. Rulemaking.

23 (a) The Illinois Administrative Procedure Act applies to

1 all administrative rules and procedures of the Transportation
2 Agency under this Act, except that nothing in this Act shall be
3 construed to render any prequalification or other
4 responsibility criteria as a "license" or "licensing" under
5 that Act.

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

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

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

13 (20 ILCS 2705/2705-233 new)

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

22 Section 910. The Illinois Finance Authority Act is amended

1 by adding Section 825-108 as follows:

2 (20 ILCS 3501/825-108 new)

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

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

12 (30 ILCS 500/1-10.5 new)

13 Sec. 1-10.5. Alternative Technical Concepts.

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

18 (b) Notwithstanding subsection (b) of Section 1-10 of this
19 Code, the Department of Transportation may allow bidders and
20 proposers to submit Alternative Technical Concepts in their
21 bids and proposals, if the Department determines that the
22 Alternative Technical Concepts provide an equal or better
23 solution than the underlying technical requirements applicable

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

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

16 (30 ILCS 550/1.9 new)

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

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

1 (30 ILCS 570/2.8 new)

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

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

10 (30 ILCS 575/2.8 new)

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

16 Section 935. The Toll Highway Act is amended by adding
17 Section 11.2 as follows:

18 (605 ILCS 10/11.2 new)

19 Sec. 11.2. Innovations for Transportation Infrastructure
20 Act. The Authority may exercise all powers granted to it under
21 the Innovations for Transportation Infrastructure Act,

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

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

7 (735 ILCS 30/15-5-48 new)

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

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

14 Section 945. The Prevailing Wage Act is amended by
15 changing Section 2 as follows:

16 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

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

1 As used in this Act, unless the context indicates
2 otherwise:

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

1 there is no project labor agreement; (ii) all work performed
2 pursuant to a public private agreement under the Public
3 Private Agreements for the Illiana Expressway Act or the
4 Public-Private Agreements for the South Suburban Airport Act;
5 ~~and~~ (iii) all projects undertaken under a public-private
6 agreement under the Public-Private Partnerships for
7 Transportation Act; and (iv) all transportation facilities
8 undertaken under a design-build contract or a Construction
9 Manager/General Contractor contract under the Innovations for
10 Transportation Infrastructure Act. "Public works" also
11 includes all projects at leased facility property used for
12 airport purposes under Section 35 of the Local Government
13 Facility Lease Act. "Public works" also includes the
14 construction of a new wind power facility by a business
15 designated as a High Impact Business under Section
16 5.5(a)(3)(E) and the construction of a new utility-scale solar
17 power facility by a business designated as a High Impact
18 Business under Section 5.5(a)(3)(E-5) of the Illinois
19 Enterprise Zone Act. "Public works" also includes electric
20 vehicle charging station projects financed pursuant to the
21 Electric Vehicle Act and renewable energy projects required to
22 pay the prevailing wage pursuant to the Illinois Power Agency
23 Act. "Public works" does not include work done directly by any
24 public utility company, whether or not done under public
25 supervision or direction, or paid for wholly or in part out of
26 public funds. "Public works" also includes construction

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

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

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

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

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

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

1 or certified pursuant to the National Labor Relations Act.

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

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

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

15 Section 999. Effective date. This Act takes effect upon
16 becoming law.