

SB3620



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3620

Introduced 2/9/2024, by Sen. Ram Villivalam

SYNOPSIS AS INTRODUCED:

630 ILCS 5/10
630 ILCS 5/15
630 ILCS 5/19

Amends the Public-Private Partnerships for Transportation Act. Deletes the definition of "transportation agency". Modifies the definition of "proposer". Provides that a responsible public entity may not receive unsolicited proposals for a project. Deletes provisions that allowed unsolicited proposals for projects if specified guidelines were met. Effective immediately.

LRB103 36329 MXP 66427 b

A BILL FOR

1 AN ACT concerning transportation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public-Private Partnerships for
5 Transportation Act is amended by changing Sections 10, 15, and
6 19 as follows:

7 (630 ILCS 5/10)

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

9 "Approved proposal" means the proposal that is approved by
10 the responsible public entity pursuant to subsection (j) of
11 Section 20 of this Act.

12 "Approved proposer" means the private entity whose
13 proposal is the approved proposal.

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

16 "Contractor" means a private entity that has entered into
17 a public-private agreement with the responsible public entity
18 to provide services to or on behalf of the responsible public
19 entity.

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

22 "Design-build agreement" means the agreement between the
23 selected private entity and the responsible public entity

1 under which the selected private entity agrees to furnish
2 design, construction, and related services for a
3 transportation facility under this Act.

4 "Develop" or "development" means to do one or more of the
5 following: plan, design, develop, lease, acquire, install,
6 construct, reconstruct, rehabilitate, extend, or expand.

7 "Maintain" or "maintenance" includes ordinary maintenance,
8 repair, rehabilitation, capital maintenance, maintenance
9 replacement, and any other categories of maintenance that may
10 be designated by the responsible public entity.

11 "Operate" or "operation" means to do one or more of the
12 following: maintain, improve, equip, modify, or otherwise
13 operate.

14 "Private entity" means any combination of one or more
15 individuals, corporations, general partnerships, limited
16 liability companies, limited partnerships, joint ventures,
17 business trusts, nonprofit entities, or other business
18 entities that are parties to a proposal for a transportation
19 project or an agreement related to a transportation project. A
20 public agency may provide services to a contractor as a
21 subcontractor or subconsultant without affecting the private
22 status of the private entity and the ability to enter into a
23 public-private agreement. A transportation agency is not a
24 private entity.

25 "Proposal" means all materials and documents prepared by
26 or on behalf of a private entity relating to the proposed

1 development, financing, or operation of a transportation
2 facility as a transportation project.

3 "Proposer" means a private entity that has submitted ~~an~~
4 ~~unsolicited proposal for a public-private agreement to a~~
5 ~~responsible public entity under this Act or~~ a proposal or
6 statement of qualifications for a public-private agreement in
7 response to a request for proposals or a request for
8 qualifications issued by a responsible public entity under
9 this Act.

10 "Public-private agreement" means the public-private
11 agreement between the contractor and the responsible public
12 entity relating to one or more of the development, financing,
13 or operation of a transportation project that is entered into
14 under this Act.

15 "Request for information" means all materials and
16 documents prepared by or on behalf of the responsible public
17 entity to solicit information from private entities with
18 respect to transportation projects.

19 "Request for proposals" means all materials and documents
20 prepared by or on behalf of the responsible public entity to
21 solicit proposals from private entities to enter into a
22 public-private agreement.

23 "Request for qualifications" means all materials and
24 documents prepared by or on behalf of the responsible public
25 entity to solicit statements of qualification from private
26 entities to enter into a public-private agreement.

1 "Responsible public entity" means the Department of
2 Transportation or ~~7~~ the Illinois State Toll Highway Authority.

3 "Revenues" means all revenues, including any combination
4 of: income; earnings and interest; user fees; lease payments;
5 allocations; federal, State, and local appropriations, grants,
6 loans, lines of credit, and credit guarantees; bond proceeds;
7 equity investments; service payments; or other receipts;
8 arising out of or in connection with a transportation project,
9 including the development, financing, and operation of a
10 transportation project. The term includes money received as
11 grants, loans, lines of credit, credit guarantees, or
12 otherwise in aid of a transportation project from the federal
13 government, the State, a unit of local government, or any
14 agency or instrumentality of the federal government, the
15 State, or a unit of local government.

16 "Shortlist" means the process by which a responsible
17 public entity will review, evaluate, and rank statements of
18 qualifications submitted in response to a request for
19 qualifications and then identify the proposers who are
20 eligible to submit a detailed proposal in response to a
21 request for proposals. The identified proposers constitute the
22 shortlist for the transportation project to which the request
23 for proposals relates.

24 ~~"Transportation agency" means (i) the Department or (ii)~~
25 ~~the Authority.~~

26 "Transportation facility" means any new or existing road,

1 highway, toll highway, bridge, tunnel, intermodal facility,
2 intercity or high-speed passenger rail, or other
3 transportation facility or infrastructure, excluding airports,
4 under the jurisdiction of a responsible public entity, except
5 those facilities for the Illiana Expressway. The term
6 "transportation facility" may refer to one or more
7 transportation facilities that are proposed to be developed or
8 operated as part of a single transportation project.

9 "Transportation project" or "project" means any or the
10 combination of the design, development, construction,
11 financing, or operation with respect to all or a portion of any
12 transportation facility under the jurisdiction of the
13 responsible public entity, except those facilities for the
14 Illiana Expressway, undertaken pursuant to this Act.

15 "Unit of local government" has the meaning ascribed to
16 that term in Article VII, Section 1 of the Constitution of the
17 State of Illinois and also means any unit designated as a
18 municipal corporation.

19 "Unsolicited proposal" means a written proposal that is
20 submitted to a responsible public entity on the initiative of
21 the private sector entity or entities for the purpose of
22 developing a partnership, and that is not in response to a
23 formal or informal request issued by a responsible public
24 entity.

25 "User fees" or "tolls" means the rates, tolls, fees, or
26 other charges imposed by the contractor for use of all or a

1 portion of a transportation project under a public-private
2 agreement.

3 (Source: P.A. 103-570, eff. 1-1-24.)

4 (630 ILCS 5/15)

5 Sec. 15. Formation of public-private agreements; project
6 planning.

7 (a) Each responsible public entity may exercise the powers
8 granted by this Act to do some or all to design, develop,
9 construct, finance, and operate any part of one or more
10 transportation projects through public-private agreements with
11 one or more private entities, except for transportation
12 projects for the Illiana Expressway as defined in the Public
13 Private Agreements for the Illiana Expressway Act. The net
14 proceeds, if any, arising out of a transportation project or
15 public-private agreement undertaken by the Department pursuant
16 to this Act shall be deposited into the Public-Private
17 Partnerships for Transportation Fund. The net proceeds arising
18 out of a transportation project or public-private agreement
19 undertaken by the Authority pursuant to this Act shall be
20 deposited into the Illinois State Toll Highway Authority Fund
21 and shall be used only as authorized by Section 23 of the Toll
22 Highway Act.

23 (b) The Authority may enter into a public-private
24 partnership to design, develop, construct, finance, and
25 operate new toll highways authorized by the Governor and the

1 General Assembly pursuant to Section 14.1 of the Toll Highway
2 Act, non-highway transportation projects on the toll highway
3 system such as commuter rail or high-speed rail lines, and
4 intelligent transportation infrastructure that will enhance
5 the safety, efficiency, and environmental quality of the toll
6 highway system. The Authority may operate or provide
7 operational services such as toll collection on highways which
8 are developed or financed, or both, through a public-private
9 agreement entered into by another public entity, under an
10 agreement with the public entity or contractor responsible for
11 the transportation project.

12 (c) A contractor has:

13 (1) all powers allowed by law generally to a private
14 entity having the same form of organization as the
15 contractor; and

16 (2) the power to develop, finance, and operate the
17 transportation facility and to impose user fees in
18 connection with the use of the transportation facility,
19 subject to the terms of the public-private agreement.

20 No tolls or user fees may be imposed by the contractor
21 except as set forth in a public-private agreement.

22 (d) Prior to ~~commencing the procurement process under an~~
23 ~~unsolicited proposal or~~ the issuance of any request for
24 qualifications or request for proposals with respect to any
25 potential project undertaken by a responsible public entity
26 pursuant to Section 19 or 20 of this Act, the commencement of a

1 procurement process for that particular potential project
2 shall be authorized by joint resolution of the General
3 Assembly.

4 (e) (Blank).

5 (f) Any project undertaken under this Act shall be subject
6 to all applicable planning requirements otherwise required by
7 law, including land use planning, regional planning,
8 transportation planning, and environmental compliance
9 requirements.

10 (g) (Blank).

11 (h) The responsible public entity shall hold one or more
12 public hearings following its submittals to the General
13 Assembly under subsection (d) of this Section. These public
14 hearings shall address any potential project that the
15 responsible public entity submitted to the General Assembly
16 for review under subsection (d). The responsible public entity
17 shall publish a notice of the hearing or hearings at least 7
18 days before a hearing takes place, and shall include the
19 following in the notice: (i) the date, time, and place of the
20 hearing and the address of the responsible public entity; (ii)
21 a brief description of the potential projects that the
22 responsible public entity is considering undertaking; and
23 (iii) a statement that the public may comment on the potential
24 projects.

25 (Source: P.A. 103-570, eff. 1-1-24.)

1 (630 ILCS 5/19)

2 Sec. 19. Unsolicited proposals.

3 (a) A responsible public entity may not receive
4 unsolicited proposals for a project . ~~and may thereafter enter~~
5 ~~into a public private agreement with a private entity, or a~~
6 ~~consortium of private entities, for the design, construction,~~
7 ~~upgrading, operating, ownership, or financing of facilities.~~

8 ~~(b) A responsible public entity may consider, evaluate,~~
9 ~~and accept an unsolicited proposal for a public private~~
10 ~~partnership project from a private entity if the proposal:~~

11 ~~(1) is independently developed and drafted by the~~
12 ~~proposer without responsible public entity supervision;~~

13 ~~(2) shows that the proposed project could benefit the~~
14 ~~transportation system;~~

15 ~~(3) includes a financing plan to allow the project to~~
16 ~~move forward pursuant to the applicable responsible public~~
17 ~~entity's budget and finance requirements; and~~

18 ~~(4) includes sufficient detail and information for the~~
19 ~~responsible public entity to evaluate the proposal in an~~
20 ~~objective and timely manner and permit a determination~~
21 ~~that the project would be worthwhile.~~

22 ~~(c) The unsolicited proposal shall include the following:~~

23 ~~(1) an executive summary covering the major elements~~
24 ~~of the proposal;~~

25 ~~(2) qualifications concerning the experience,~~
26 ~~expertise, technical competence, and qualifications of the~~

1 ~~private entity and of each member of its management team~~
2 ~~and of other key employees, consultants, and~~
3 ~~subcontractors, including the name, address, and~~
4 ~~professional designation;~~

5 ~~(3) a project description, including, when applicable:~~

6 ~~(A) the limits, scope, and location of the~~
7 ~~proposed project;~~

8 ~~(B) right of way requirements;~~

9 ~~(C) connections with other facilities and~~
10 ~~improvements to those facilities necessary if the~~
11 ~~project is developed;~~

12 ~~(D) a conceptual project design; and~~

13 ~~(E) a statement of the project's relationship to~~
14 ~~and impact upon relevant existing plans of the~~
15 ~~responsible public entity;~~

16 ~~(4) a facilities project schedule, including when~~
17 ~~applicable, estimates of:~~

18 ~~(A) dates of contract award;~~

19 ~~(B) start of construction;~~

20 ~~(C) completion of construction;~~

21 ~~(D) start of operations; and~~

22 ~~(E) major maintenance or reconstruction activities~~
23 ~~during the life of the proposed project agreement;~~

24 ~~(5) an operating plan describing the operation of the~~
25 ~~completed facility if operation of a facility is part of~~
26 ~~the proposal, describing the management structure and~~

1 ~~approach, the proposed period of operations, enforcement,~~
2 ~~emergency response, and other relevant information;~~

3 ~~(6) a finance plan describing the proposed financing~~
4 ~~of the project, identifying the source of funds to, where~~
5 ~~applicable, design, construct, maintain, and manage the~~
6 ~~project during the term of the proposed contract; and~~

7 ~~(7) the legal basis for the project and licenses and~~
8 ~~certifications; the private entity must demonstrate that~~
9 ~~it has all licenses and certificates necessary to complete~~
10 ~~the project.~~

11 ~~(d) Within 120 days after receiving an unsolicited~~
12 ~~proposal, the responsible public entity shall complete a~~
13 ~~preliminary evaluation of the unsolicited proposal and shall~~
14 ~~either:~~

15 ~~(1) if the preliminary evaluation is unfavorable,~~
16 ~~return the proposal without further action;~~

17 ~~(2) if the preliminary evaluation is favorable, notify~~
18 ~~the proposer that the responsible public entity will~~
19 ~~further evaluate the proposal; or~~

20 ~~(3) request amendments, clarification, or modification~~
21 ~~of the unsolicited proposal.~~

22 ~~(e) The procurement process for unsolicited proposals~~
23 ~~shall be as follows:~~

24 ~~(1) If the responsible public entity chooses to~~
25 ~~further evaluate an unsolicited proposal with the intent~~
26 ~~to enter into a public private agreement for the proposed~~

1 ~~project, then the responsible public entity shall publish~~
2 ~~notice in the Illinois Procurement Bulletin or in a~~
3 ~~newspaper of general circulation covering the location of~~
4 ~~the project at least once a week for 2 weeks stating that~~
5 ~~the responsible public entity has received a proposal and~~
6 ~~will accept other proposals for the same project. The time~~
7 ~~frame within which the responsible public entity may~~
8 ~~accept other proposals shall be determined by the~~
9 ~~responsible public entity on a project by project basis~~
10 ~~based upon the complexity of the transportation project~~
11 ~~and the public benefit to be gained by allowing a longer or~~
12 ~~shorter period of time within which other proposals may be~~
13 ~~received; however, the time frame for allowing other~~
14 ~~proposals must be at least 21 days, but no more than 120~~
15 ~~days, after the initial date of publication.~~

16 ~~(2) A copy of the notice must be mailed to each local~~
17 ~~government directly affected by the transportation~~
18 ~~project.~~

19 ~~(3) The responsible public entity shall provide~~
20 ~~reasonably sufficient information, including the identity~~
21 ~~of its contact person, to enable other private entities to~~
22 ~~make proposals.~~

23 ~~(4) If, after no less than 120 days, no~~
24 ~~counterproposal is received, or if the counterproposals~~
25 ~~are evaluated and found to be equal to or inferior to the~~
26 ~~original unsolicited proposal, the responsible public~~

1 ~~entity may proceed to negotiate a contract with the~~
2 ~~original proposer.~~

3 ~~(5) If, after no less than 120 days, one or more~~
4 ~~counterproposals meeting unsolicited proposal standards~~
5 ~~are received, and if, in the opinion of the responsible~~
6 ~~public entity, the counterproposals are evaluated and~~
7 ~~found to be superior to the original unsolicited proposal,~~
8 ~~the responsible public entity shall proceed to determine~~
9 ~~the successful participant through a final procurement~~
10 ~~phase known as "Best and Final Offer" (BAFO). The BAFO is a~~
11 ~~process whereby a responsible public entity shall invite~~
12 ~~the original private sector party and the proponent~~
13 ~~submitting the superior counterproposal to engage in a~~
14 ~~BAFO phase. The invitation to participate in the BAFO~~
15 ~~phase will provide to each participating proposer:~~

16 ~~(A) the general concepts that were considered~~
17 ~~superior to the original proposal, while keeping~~
18 ~~proprietary information contained in the proposals~~
19 ~~confidential to the extent possible; and~~

20 ~~(B) the preestablished evaluation criteria or the~~
21 ~~"basis of award" to be used to determine the~~
22 ~~successful proponent.~~

23 ~~(6) Offers received in response to the BAFO invitation~~
24 ~~will be reviewed by the responsible public entity and~~
25 ~~scored in accordance with a preestablished criteria, or~~
26 ~~alternatively, in accordance with the basis of award~~

1 ~~provision identified through the BAFO process. The~~
2 ~~successful proponent will be the proponent offering "best~~
3 ~~value" to the responsible public entity.~~

4 ~~(7) In all cases, the basis of award will be the best~~
5 ~~value to the responsible public entity, as determined by~~
6 ~~the responsible public entity.~~

7 ~~(f) After a comprehensive evaluation and acceptance of an~~
8 ~~unsolicited proposal and any alternatives, the responsible~~
9 ~~public entity may commence negotiations with a proposer,~~
10 ~~considering:~~

11 ~~(1) the proposal has received a favorable~~
12 ~~comprehensive evaluation;~~

13 ~~(2) the proposal is not duplicative of existing~~
14 ~~infrastructure project;~~

15 ~~(3) the alternative proposal does not closely resemble~~
16 ~~a pending competitive proposal for a public private~~
17 ~~private partnership or other procurement;~~

18 ~~(4) the proposal demonstrates a unique method,~~
19 ~~approach, or concept;~~

20 ~~(5) facts and circumstances that preclude or warrant~~
21 ~~additional competition;~~

22 ~~(6) the availability of any funds, debts, or assets~~
23 ~~that the State will contribute to the project;~~

24 ~~(7) facts and circumstances demonstrating that the~~
25 ~~project will likely have a significant adverse impact on~~
26 ~~on State bond ratings; and~~

1 ~~(8) indemnifications included in the proposal.~~

2 (Source: P.A. 103-570, eff. 1-1-24; revised 1-3-24.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.