

AN ACT concerning State government.

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

Section 5. The State Finance Act is amended by adding Section 5.811 as follows:

(30 ILCS 105/5.811 new)

Sec. 5.811. The Public-Private Partnerships for
Transportation Fund.

Section 10. The Public-Private Partnerships for Transportation Act is amended by changing Sections 10, 15, 20, 25, 35, 40, and 45 and by adding Section 90 as follows:

(630 ILCS 5/10)

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

"Approved proposal" means the proposal that is approved by the transportation agency pursuant to subsection (j) ~~(e)~~ of Section 20 of this Act.

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

"Authority" means the Illinois State Toll Highway Authority.

"Contractor" means a private entity that has entered into a

public-private agreement with the transportation agency to provide services to or on behalf of the transportation agency.

"Department" means the Illinois Department of Transportation.

"Design-build agreement" means the agreement between the selected private entity and the transportation agency under which the selected private entity agrees to furnish design, construction, and related services for a transportation facility under this Act.

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

"Maintain" or "maintenance" includes ordinary maintenance, repair, rehabilitation, capital maintenance, maintenance replacement, and any other categories of maintenance that may be designated by the transportation agency.

"Metropolitan planning organization" means a metropolitan planning organization designated under 23 U.S.C. Section 134 whose metropolitan planning area boundaries are partially or completely within the State.

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

"Private entity" means any combination of one or more individuals, corporations, general partnerships, limited liability companies, limited partnerships, joint ventures,

business trusts, nonprofit entities, or other business entities that are parties to a proposal for a transportation project or an agreement related to a transportation project. A public agency may provide services to a contractor as a subcontractor or subconsultant without affecting the private status of the private entity and the ability to enter into a public-private agreement. A transportation agency is not a private entity.

"Proposal" means all materials and documents prepared by or on behalf of a private entity relating to the proposed development, financing, or operation of a transportation facility as a transportation project.

"Proposer" means a private entity that has submitted a proposal or statement of qualifications for a public-private agreement in response to a request for proposals or a request for qualifications issued by a transportation agency under this Act.

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

"Request for information" means all materials and documents prepared by or on behalf of the transportation agency to solicit information from private entities with respect to transportation projects.

"Request for proposals" means all materials and documents prepared by or on behalf of the transportation agency to solicit proposals from private entities to enter into a public-private agreement.

"Request for qualifications" means all materials and documents prepared by or on behalf of the transportation agency to solicit statements of qualification from private entities to enter into a public-private agreement.

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

"Shortlist" means the process by which a transportation agency will review, evaluate, and rank statements of qualifications submitted in response to a request for qualifications and then identify the proposers who are eligible to submit a detailed proposal in response to a request for

proposals. The identified proposers constitute the shortlist for the transportation project to which the request for proposals relates.

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

"Transportation facility" means any new or existing road, highway, toll highway, bridge, tunnel, intermodal facility, intercity or high-speed passenger rail, or other transportation facility or infrastructure, excluding airports, under the jurisdiction of the Department or the Authority, except those facilities for the Illiana Expressway. The term "transportation facility" may refer to one or more transportation facilities that are proposed to be developed or operated as part of a single transportation project.

"Transportation project" or "project" means any or the combination of the development, financing, or operation with respect to all or a portion of any transportation facility under the jurisdiction of the transportation agency, except those facilities for the Illiana Expressway, undertaken pursuant to this Act.

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

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

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

(Source: P.A. 97-502, eff. 8-23-11.)

(630 ILCS 5/15)

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

(a) Each transportation agency may exercise the powers granted by this Act to do some or all to develop, finance, and operate any part of one or more transportation projects through public-private agreements with one or more private entities, except for transportation projects for the Illiana Expressway as defined in the Public Private Agreements for the Illiana Expressway Act. The net proceeds, if any, arising out of a transportation project or public-private agreement undertaken by the Department pursuant to this Act shall be deposited into the Public-Private Partnerships for Transportation State Construction Account Fund. The net proceeds arising out of a transportation project or public-private agreement undertaken by the Authority pursuant to this Act shall be deposited into the Illinois State Toll Highway Authority Fund and shall be used only as authorized by Section 23 of the Toll Highway Act.

(b) The Authority shall not enter into a public-private agreement involving a lease or other transfer of any toll highway, or portions thereof, under the Authority's jurisdiction which were open to vehicular traffic on the

effective date of this Act. The Authority shall not enter into a public-private agreement for the purpose of making roadway improvements, including but not limited to reconstruction, adding lanes, and adding ramps, to any toll highway, or portions thereof, under the Authority's jurisdiction which were open to vehicular traffic on the effective date of this Act. The Authority shall not use any revenue generated by any toll highway, or portions thereof, under the Authority's jurisdiction which were open to vehicular traffic on the effective date of this Act to enter into or provide funding for a public-private agreement. The Authority shall not use any asset, or the proceeds from the sale or lease of any such asset, which was owned by the Authority on the effective date of this Act to enter into or provide funding for a public-private agreement. The Authority may enter into a public-private partnership to develop, finance, and operate new toll highways authorized by the Governor and the General Assembly pursuant to Section 14.1 of the Toll Highway Act, non-highway transportation projects on the toll highway system such as commuter rail or high-speed rail lines, and intelligent transportation infrastructure that will enhance the safety, efficiency, and environmental quality of the toll highway system. The Authority may operate or provide operational services such as toll collection on highways which are developed or financed, or both, through a public-private agreement entered into by another public entity, under an

agreement with the public entity or contractor responsible for the transportation project.

(c) A contractor has:

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

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

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

(d) Each year, at least 30 days prior to the beginning of the transportation agency's fiscal year, and at other times the transportation agency deems necessary, the Department and the Authority shall submit for review to the General Assembly a description of potential projects that the transportation agency is considering undertaking under this Act. Any submission from the Authority shall indicate which of its potential projects, if any, will involve the proposer operating the transportation facility for a period of one year or more. Prior to the issuance of any request for qualifications or request for proposals with respect to any potential project undertaken by the Department or the Authority pursuant to Section 20 of this Act, the commencement of a procurement process for that particular potential project shall be

authorized by joint resolution of the General Assembly.

(e) Each year, at least 30 days prior to the beginning of the transportation agency's fiscal year, the transportation agency shall submit a description of potential projects that the transportation agency is considering undertaking under this Act to each county, municipality, and metropolitan planning organization, with respect to each project located within its boundaries.

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

(g) Any new transportation facility developed as a project under this Act must be consistent with the regional plan then in existence of any metropolitan planning organization in whose boundaries the project is located.

(h) The transportation agency shall hold one or more public hearings within 30 days of each of its submittals to the General Assembly under subsection (d) of this Section. These public hearings shall address potential projects that the transportation agency submitted to the General Assembly for review under subsection (d). The transportation agency shall publish a notice of the hearing or hearings at least 7 days before a hearing takes place, and shall include the following in the notice: (i) the date, time, and place of the hearing and

the address of the transportation agency; (ii) a brief description of the potential projects that the transportation agency is considering undertaking; and (iii) a statement that the public may comment on the potential projects.

(Source: P.A. 97-502, eff. 8-23-11.)

(630 ILCS 5/20)

Sec. 20. Procurement process.

(a) A transportation agency seeking to enter into a public-private partnership with a private entity for the development, finance, and operation of a transportation facility as a transportation project shall determine and set forth the criteria for the selection process. The transportation agency shall use (i) a competitive sealed bidding process, (ii) a competitive sealed proposal process, or (iii) a design-build procurement process in accordance with Section 25 of this Act. Before using one of these processes the transportation agency may use a request for information to obtain information relating to possible public-private partnerships.

(b) If a transportation project will require the performance of design work, the transportation agency shall use the shortlist selection process set forth in subsection (g) of this Section to evaluate and shortlist private entities based on qualifications, including but not limited to design qualifications.

A request for qualifications, request for proposals, or public-private agreement awarded to a contractor for a transportation project shall require that any subsequent need for architectural, engineering, or land surveying services which arises after the submittal of the request for qualifications or request for proposals or the awarding of the public-private agreement shall be procured by the contractor using a qualifications-based selection process consisting of:

- (1) the publication of notice of availability of services;
- (2) a statement of desired qualifications;
- (3) an evaluation based on the desired qualifications;
- (4) the development of a shortlist ranking the firms in order of qualifications; and
- (5) negotiations with the ranked firms for a fair and reasonable fee.

Compliance with the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act shall be deemed prima facie compliance with this subsection (b). Every transportation project contract shall include provisions setting forth the requirements of this subsection (b).

(c) Prior to commencing a procurement for a transportation project under this Act, the transportation agency shall notify any other applicable public agency, including the Authority, in all cases involving toll facilities where the Department would commence the procurement, of its interest in undertaking the

procurement and shall provide the other public agency or agencies with an opportunity to offer to develop and implement the transportation project. The transportation agency shall supply the other public agency or agencies with no less than the same level and type of information concerning the project that the transportation agency would supply to private entities in the procurement, unless that information is not then available, in which case the transportation agency shall supply the other public agency or agencies with the maximum amount of relevant information about the project as is then reasonably available. The transportation agency shall make available to the other public agencies the same subsidies, benefits, concessions, and other consideration that it intends to make available to the private entities in the procurement.

The public agencies shall have a maximum period of 60 days to review the information about the proposed transportation project and to respond to the transportation agency in writing to accept or reject the opportunity to develop and implement the transportation project. If a public agency rejects the opportunity during the 60-day period, then the public agency may not participate in the procurement for the proposed transportation project by submitting a proposal of its own. If a public agency fails to accept or reject this opportunity in writing within the 60-day period, it shall be deemed to have rejected the opportunity.

If a public agency accepts the opportunity within the

60-day period, then the public agency shall have up to 120 days (or a longer period, if extended by the transportation agency), to (i) submit to the transportation agency a reasonable plan for development of the transportation project; (ii) if applicable, make an offer of reasonable consideration for the opportunity to undertake the transportation project; and (iii) negotiate a mutually acceptable intergovernmental agreement with the transportation agency that facilitates the development of the transportation project and requires that the transportation agency follow its procurement procedures under the Illinois Procurement Code and applicable rules rather than this Act. In considering whether a public agency's plan for developing and implementing the project is reasonable, the transportation agency shall consider the public agency's history of developing and implementing similar projects, the public agency's current capacity to develop and implement the proposed project, the user charges, if any, contemplated by the public agency's plan and how these user charges compare with user charges that would be imposed by a private entity developing and implementing the same project, the project delivery schedule proposed by the public agency, and other reasonable factors that are necessary, including consideration of risks and whether subsidy costs may be reduced, to determine whether development and implementation of the project by the public agency is in the best interest of the people of this State.

(d) If the transportation agency rejects or fails to negotiate mutually acceptable terms regarding a public agency's plan for developing and implementing the transportation project during the 120-day period described in subsection (c), then the public agency may not participate in the procurement for the proposed transportation project by submitting a proposal of its own. Following a rejection or failure to reach agreement regarding a public agency's plan, if the transportation agency later proceeds with a procurement in which it materially changes (i) the nature or scope of the project; (ii) any subsidies, benefits, concessions, or other significant project-related considerations made available to the bidders; or (iii) any other terms of the project, as compared to when the transportation agency supplied information about the project to public agencies under subsection (c), then the transportation agency shall give public agencies another opportunity in accordance with subsection (c) to provide proposals for developing and implementing the project.

(e) Nothing in this Section 20 requires a transportation agency to go through a procurement process prior to developing and implementing a project through a public agency as described in subsection (c).

~~The selection of professional design firms by a transportation agency or private entity shall comply with the Architectural, Engineering, and Land Surveying Qualifications~~

~~Based Selection Act or Section 25 of this Act.~~

~~Nothing in this Act shall preclude a public agency, including the Department or the Authority, from submitting a proposal to develop or operate, or to develop and operate, a transportation facility as a transportation project. The transportation agency shall give a proposal submitted by a public agency equal consideration as it gives proposals submitted by private entities, and, for that purpose, treat the public agency as a private entity.~~

(f) All procurement processes shall incorporate requirements and set forth goals for participation by disadvantaged business enterprises as allowed under State and federal law.

(g) ~~(b)~~ The transportation agency shall establish a process to shortlist ~~for prequalification of all~~ potential private entities. The transportation agency shall: (i) provide a public notice of the shortlisting ~~prequalification~~ process for such period as deemed appropriate by the agency; (ii) set forth requirements and evaluation criteria in a request for qualifications ~~order to become prequalified~~; (iii) develop a shortlist by determining ~~determine~~ which private entities that have submitted statements of qualification ~~prequalification applications~~, if any, meet the minimum requirements and best satisfy the evaluation criteria set forth in the request for qualifications; and (iv) allow only those entities, or groups of entities such as unincorporated joint ventures, that have

been shortlisted ~~prequalified~~ to submit proposals or bids. Throughout the procurement period and as necessary following the award of a contract, the ~~The~~ transportation agency shall make publicly available on its website ~~during the request for qualifications period~~ information regarding firms that are prequalified by the transportation agency pursuant to Section 20 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act to provide architectural, engineering, and land surveying services. The transportation agencies and shall require private entities to use firms prequalified under this Act to provide architectural, engineering, and land surveying services. Firms identified to provide architectural, engineering, and land surveying services in a statement of qualifications shall be prequalified under the Act to provide the identified services prior to the transportation agency's award of the contract ~~the use of such firms for such services.~~

(h) ~~(e)~~ Competitive sealed bidding requirements:

(1) All contracts shall be awarded by competitive sealed bidding except as otherwise provided in subsection (i) ~~(d)~~ of this Section and Section 25 of this Act.

(2) An invitation for bids shall be issued and shall include a description of the public-private partnership with a private entity for the development, finance, and operation of a transportation facility as a transportation project, and the material contractual terms and conditions

applicable to the procurement.

(3) Public notice of the invitation for bids shall be published in the State of Illinois Procurement Bulletin at least 21 days before the date set in the invitation for the opening of bids.

(4) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information as may be specified by rule shall be recorded. After the award of the contract, the winning bid and the record of each unsuccessful bid shall be open to public inspection.

(5) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Act. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award, such as discounts, transportation costs, and total or life cycle costs, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.

(6) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards of contracts based on bid mistakes, shall be

permitted in accordance with rules. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids based on bid mistakes shall be supported by written determination made by the transportation agency.

(7) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, except when the transportation agency determines it is not in the best interest of the State and by written explanation determines another bidder shall receive the award. The explanation shall appear in the appropriate volume of the State of Illinois Procurement Bulletin. The written explanation must include:

(A) a description of the agency's needs;

(B) a determination that the anticipated cost will be fair and reasonable;

(C) a listing of all responsible and responsive bidders; and

(D) the name of the bidder selected, pricing, and the reasons for selecting that bidder.

(8) When it is considered impracticable to initially prepare a purchase description to support an award based on

price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(i) ~~(d)~~ Competitive sealed proposal requirements:

(1) When the transportation agency determines in writing that the use of competitive sealed bidding or design-build procurement is either not practicable or not advantageous to the State, a contract may be entered into by competitive sealed proposals.

(2) Proposals shall be solicited through a request for proposals.

(3) Public notice of the request for proposals shall be published in the State of Illinois Procurement Bulletin at least 21 days before the date set in the invitation for the opening of proposals.

(4) Proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the request for proposals, but proposals shall be opened in a manner to avoid disclosure of contents to competing offerors during the process of negotiation. A record of proposals shall be prepared and shall be open for public inspection after contract award.

(5) The requests for proposals shall state the relative importance of price and other evaluation factors.

Proposals shall be submitted in 2 parts: (i) covering items except price; and (ii) covering price. The first part of all proposals shall be evaluated and ranked independently of the second part of all proposals.

(6) As provided in the request for proposals and under any applicable rules, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarifying and assuring full understanding of and responsiveness to the solicitation requirements. Those offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submission and before award for the purpose of obtaining best and final offers. In conducting discussions there shall be no disclosure of any information derived from proposals submitted by competing offerors. If information is disclosed to any offeror, it shall be provided to all competing offerors.

(7) Awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

(j) ~~(e)~~ In the case of a proposal or proposals to the

Department or the Authority, the transportation agency shall determine, based on its review and evaluation of the proposal or proposals received in response to the request for proposals, which one or more proposals, if any, best serve the public purpose of this Act and satisfy the criteria set forth in the request for proposals and, with respect to such proposal or proposals, shall:

(1) submit the proposal or proposals to the Commission on Government Forecasting and Accountability, which, within 20 days of submission by the transportation agency, shall complete a review of the proposal or proposals and report on the value of the proposal or proposals to the State;

(2) hold one or more public hearings on the proposal or proposals, publish notice of the hearing or hearings at least 7 days before the hearing, and include the following in the notice: (i) the date, time, and place of the hearing and the address of the transportation agency, (ii) the subject matter of the hearing, (iii) a description of the agreement to be awarded, (iv) the determination made by the transportation agency that such proposal or proposals best serve the public purpose of this Act and satisfy the criteria set forth in the request for proposals, and (v) that the public may be heard on the proposal or proposals during the public hearing; and

(3) determine whether or not to recommend to the

Governor that the Governor approve the proposal or proposals.

The Governor may approve one or more proposals recommended by the Department or the Authority based upon the review, evaluation, and recommendation of the transportation agency, the review and report of the Commission on Government Forecasting and Accountability, the public hearing, and the best interests of the State.

(k) ~~(f)~~ In addition to any other rights under this Act, in connection with any procurement under this Act, the following rights are reserved to each transportation agency:

(1) to withdraw a request for information, a request for qualifications, or a request for proposals at any time, and to publish a new request for information, request for qualifications, or request for proposals;

(2) to not approve a proposal for any reason;

(3) to not award a public-private agreement for any reason;

(4) to request clarifications to any statement of information, qualifications, or proposal received, to seek one or more revised proposals or one or more best and final offers, or to conduct negotiations with one or more private entities that have submitted proposals;

(5) to modify, during the pendency of a procurement, the terms, provisions, and conditions of a request for information, request for qualifications, or request for

proposals or the technical specifications or form of a public-private agreement;

(6) to interview proposers; and

(7) any other rights available to the transportation agency under applicable law and regulations.

(l) ~~(g)~~ If a proposal is approved, the transportation agency shall execute the public-private agreement, publish notice of the execution of the public-private agreement on its website and in a newspaper or newspapers of general circulation within the county or counties in which the transportation project is to be located, and publish the entire agreement on its website. Any action to contest the validity of a public-private agreement entered into under this Act must be brought no later than 60 days after the date of publication of the notice of execution of the public-private agreement.

(m) ~~(h)~~ For any transportation project with an estimated construction cost of over \$50,000,000, the transportation agency may also require the approved proposer to pay the costs for an independent audit of any and all traffic and cost estimates associated with the approved proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be exposed (including improvements to other transportation facilities that may be needed as a result of the approved proposal, failure by the approved proposer to reimburse the transportation agency for services provided, and potential risk and liability in the event the approved proposer

defaults on the public-private agreement or on bonds issued for the project). If required by the transportation agency, this independent audit must be conducted by an independent consultant selected by the transportation agency, and all information from the review must be fully disclosed.

(n) ~~(i)~~ The transportation agency may also apply for, execute, or endorse applications submitted by private entities to obtain federal credit assistance for qualifying projects developed or operated pursuant to this Act.

(Source: P.A. 97-502, eff. 8-23-11.)

(630 ILCS 5/25)

Sec. 25. Design-build procurement.

(a) This Section 25 shall apply only to transportation projects for which the Department or the Authority intends to execute a design-build agreement, in which case the Department or the Authority shall abide by the requirements and procedures of this Section 25 in addition to other applicable requirements and procedures set forth in this Act.

(b)(1) The transportation agency must issue a notice of intent to receive proposals for the project at least 14 days before issuing the request for the qualifications. The transportation agency must publish the advance notice in a daily newspaper of general circulation in the county where the transportation agency is located. The transportation agency is encouraged to use publication of the notice in related

construction industry service publications. A brief description of the proposed procurement must be included in the notice. The transportation agency must provide a copy of the request for qualifications to any party requesting a copy.

(2) The request for qualifications shall be prepared for each project and must contain, without limitation, the following information: (i) the name of the transportation agency; (ii) a preliminary schedule for the completion of the contract; (iii) the proposed budget for the project and, the source of funds, to the extent not already reflected in the Department's Multi-Year Highway Improvement Program and the currently available funds at the time the request for proposal is submitted; (iv) the shortlisting process ~~prequalification criteria~~ for ~~design-build~~ entities or groups of entities such as unincorporated joint ventures wishing to submit proposals (the transportation agency shall include, at a minimum, its normal prequalification, licensing, registration, and other requirements, but nothing contained herein precludes the use of additional ~~prequalification~~ criteria by the transportation agency); (v) a summary of anticipated material requirements of the contract, including but not limited to, the proposed terms and conditions, required performance and payment bonds, insurance, and the ~~entity's plan to comply with the~~ utilization goals established by the ~~corporate authorities of the~~ transportation agency for minority and women business enterprises and compliance ~~to comply~~ with Section 2-105 of the

Illinois Human Rights Act; and (vi) ~~the performance criteria;~~
~~(vii) the evaluation criteria for each phase of the~~
~~solicitation; and (viii) the~~ anticipated number of entities
that will be shortlisted ~~considered~~ for the request for
proposals phase.

(3) The transportation agency may include any other relevant information in the request for qualifications that it chooses to supply. The private entity shall be entitled to rely upon the accuracy of this documentation in the development of its statement of qualifications and its proposal only to the extent expressly warranted by the transportation agency.

(4) The date that statements of qualifications are due must be at least 21 calendar days after the date of the issuance of the request for qualifications. In the event the cost of the project is estimated to exceed \$12,000,000, then the statement of qualifications due date must be at least 28 calendar days after the date of the issuance of the request for qualifications. The transportation agency shall include in the request for proposals a minimum of 30 days to develop the proposals after the selection of entities from the evaluation of the statements of qualifications is completed.

(c)(1) The transportation agency shall develop, with the assistance of a licensed design professional, the request for qualifications and the request for proposals, which shall include scope and performance criteria. The scope and performance criteria must be in sufficient detail and contain

adequate information to reasonably apprise the private entities of the transportation agency's overall programmatic needs and goals, including criteria and preliminary design plans, general budget parameters, schedule, and delivery requirements.

(2) Each request for qualifications and request for proposals shall also include a description of the level of design to be provided in the proposals. This description must include the scope and type of renderings, drawings, and specifications that, at a minimum, will be required by the transportation agency to be produced by the private entities.

(3) The scope and performance criteria shall be prepared by a design professional who is an employee of the transportation agency, or the transportation agency may contract with an independent design professional selected under the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act to provide these services.

(4) The design professional that prepares the scope and performance criteria is prohibited from participating in any private entity proposal for the project.

(d)(1) The transportation agency must use a two phase procedure for the selection of the successful design-build entity. The request for qualifications phase will evaluate and shortlist the private entities based on qualifications, and the request for proposals will evaluate the technical and cost proposals.

(2) The transportation agency shall include in the request for qualifications the evaluating factors to be used in the request for qualifications phase. These factors are in addition to any prequalification requirements of private entities that the transportation agency has set forth. Each request for qualifications shall establish the relative importance assigned to each evaluation factor ~~and subfactor~~, including any weighting of criteria to be employed by the transportation agency. The transportation agency must maintain a record of the evaluation scoring to be disclosed in event of a protest regarding the solicitation.

The transportation agency shall include the following criteria in every request for qualifications phase evaluation of private entities: (i) experience of personnel; (ii) successful experience with similar project types; (iii) financial capability; (iv) timeliness of past performance; (v) experience with similarly sized projects; (vi) successful reference checks of the firm; (vii) commitment to assign personnel for the duration of the project and qualifications of the entity's consultants; and (viii) ability or past performance in meeting or exhausting good faith efforts to meet the utilization goals for business enterprises established in the Business Enterprise for Minorities, Females, and Persons with Disabilities Act and in complying with Section 2-105 of the Illinois Human Rights Act. No proposal shall be considered that does not include an entity's plan to comply with the

requirements regarding ~~established in the~~ minority and women business enterprises and economically disadvantaged firms established by ~~the corporate authorities of~~ the transportation agency and with Section 2-105 of the Illinois Human Rights Act. The transportation agency may include any additional relevant criteria in the request for qualifications phase that it deems necessary for a proper qualification review.

Upon completion of the qualifications evaluation, the transportation agency shall create a shortlist of the most highly qualified private entities.

The transportation agency shall notify the entities selected for the shortlist in writing. This notification shall commence the period for the preparation of the request for proposals phase technical and cost evaluations. The transportation agency must allow sufficient time for the shortlist entities to prepare their proposals considering the scope and detail requested by the transportation agency.

(3) The transportation agency shall include in the request for proposals the evaluating factors to be used in the technical and cost submission components. Each request for proposals shall establish, for both the technical and cost submission components, the relative importance assigned to each evaluation factor ~~and subfactor~~, including any weighting of criteria to be employed by the transportation agency. The transportation agency must maintain a record of the evaluation scoring to be disclosed in event of a protest regarding the

solicitation.

The transportation agency shall include the following criteria in every request for proposals phase technical evaluation of private entities: (i) compliance with objectives of the project; (ii) compliance of proposed services to the request for proposal requirements; (iii) compliance with the request for proposal requirements ~~quality~~ of products or materials proposed; (iv) quality of design parameters; and (v) design concepts; ~~(vi) innovation in meeting the scope and performance criteria; and (vii) constructability of the proposed project.~~ The transportation agency may include any additional relevant technical evaluation factors it deems necessary for proper selection.

The transportation agency shall include the following criteria in every request for proposals phase cost evaluation: the total project cost and the time of completion. The transportation agency may include any additional relevant technical evaluation factors it deems necessary for proper selection. The guaranteed maximum project cost criteria weighing factor shall not exceed 30%.

The transportation agency shall directly employ or retain a licensed design professional to evaluate the technical and cost submissions to determine if the technical submissions are in accordance with generally accepted industry standards.

(e) Statements of qualifications and proposals must be properly identified and sealed. Statements of qualifications

and proposals may not be reviewed until after the deadline for submission has passed as set forth in the request for qualifications or the request for proposals. All private entities submitting statements of qualifications or proposals shall be disclosed after the deadline for submission, and all private entities who are selected for request for proposals phase evaluation shall also be disclosed at the time of that determination.

Design-build ~~Phase II design-build~~ proposals shall include a bid bond in the form and security as designated in the request for proposals. Proposals shall also contain a separate sealed envelope with the cost information within the overall proposal submission. Proposals shall include a list of all design professionals and other entities to which any work identified in Section 30-30 of the Illinois Procurement Code as a subdivision of construction work may be subcontracted during the performance of the contract to the extent known at the time of proposal. If the information is not known at the time of proposal, then the design-build agreement shall require the identification prior to a previously unlisted subcontractor commencing work on the transportation project.

Statements of qualifications and proposals must meet all material requirements of the request for qualifications or request for proposals, or else they may be rejected as non-responsive. The transportation agency shall have the right to reject any and all statements of qualifications and

proposals.

The private entity's proprietary intellectual property contained in the drawings and specifications of any unsuccessful statement of qualifications or proposal shall remain the property of the private entity.

The transportation agency shall review the statements of qualifications and the proposals for compliance with the performance criteria and evaluation factors.

Statements of qualifications and proposals may be withdrawn prior to the due date and time for submissions for any cause. After evaluation begins by the transportation agency, clear and convincing evidence of error is required for withdrawal.

(Source: P.A. 97-502, eff. 8-23-11.)

(630 ILCS 5/35)

Sec. 35. Public-private agreements.

(a) Unless undertaking actions otherwise permitted in an interim agreement entered into under Section 30 of this Act, before developing, financing, or operating the transportation project, the approved proposer shall enter into a public-private agreement with the transportation agency. Subject to the requirements of this Act, a public-private agreement may provide that the approved proposer, acting on behalf of the transportation agency, is partially or entirely responsible for any combination of developing, financing, or

operating the transportation project under terms set forth in the public-private agreement.

(b) The public-private agreement may, as determined appropriate by the transportation agency for the particular transportation project, provide for some or all of the following:

(1) ~~Development Construction~~, financing, and operation of the transportation project under terms set forth in the public-private agreement, in any form as deemed appropriate by the transportation agency, including, but not limited to, a long-term concession and lease, a design-bid-build agreement, a design-build agreement, a design-build-maintain agreement, a design-build-finance agreement, a design-build-operate-maintain agreement and a design-build-finance-operate-maintain agreement.

(2) Delivery of performance and payment bonds or other performance security determined suitable by the transportation agency, including letters of credit, United States bonds and notes, parent guaranties, and cash collateral, in connection with the development, financing, or operation of the transportation project, in the forms and amounts set forth in the public-private agreement or otherwise determined as satisfactory by the transportation agency to protect the transportation agency and payment bond beneficiaries who have a direct contractual relationship with the contractor or a subcontractor of the

contractor to supply labor or material. The payment or performance bond or alternative form of performance security is not required for the portion of a public-private agreement that includes only design, planning, or financing services, the performance of preliminary studies, or the acquisition of real property.

(3) Review of plans for any development or operation, or both, of the transportation project by the transportation agency.

(4) Inspection of any construction of or improvements to the transportation project by the transportation agency or another entity designated by the transportation agency or under the public-private agreement to ensure that the construction or improvements conform to the standards set forth in the public-private agreement or are otherwise acceptable to the transportation agency.

(5) Maintenance of:

(A) one or more policies of public liability insurance (copies of which shall be filed with the transportation agency accompanied by proofs of coverage); or

(B) self-insurance;

each in form and amount as set forth in the public-private agreement or otherwise satisfactory to the transportation agency as reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the

continued operation of the transportation project.

(6) Where operations are included within the contractor's obligations under the public-private agreement, monitoring of the maintenance practices of the contractor by the transportation agency or another entity designated by the transportation agency or under the public-private agreement and the taking of the actions the transportation agency finds appropriate to ensure that the transportation project is properly maintained.

(7) Reimbursement to be paid to the transportation agency as set forth in the public-private agreement for services provided by the transportation agency.

(8) Filing of appropriate financial statements and reports as set forth in the public-private agreement or as otherwise in a form acceptable to the transportation agency on a periodic basis.

(9) Compensation or payments to the contractor. Compensation or payments may include any or a combination of the following:

(A) a base fee and additional fee for project savings as the design-builder of a construction project;

(B) a development fee, payable on a lump-sum basis, progress payment basis, time and materials basis, or another basis deemed appropriate by the transportation agency;

(C) an operations fee, payable on a lump-sum basis, time and material basis, periodic basis, or another basis deemed appropriate by the transportation agency;

(D) some or all of the revenues, if any, arising out of operation of the transportation project;

(E) a maximum rate of return on investment or return on equity or a combination of the two;

(F) in-kind services, materials, property, equipment, or other items;

(G) compensation in the event of any termination;

(H) availability payments or similar arrangements whereby payments are made to the contractor pursuant to the terms set forth in the public-private agreement or related agreements; or

(I) other compensation set forth in the public-private agreement or otherwise deemed appropriate by the transportation agency.

(10) Compensation or payments to the transportation agency, if any. Compensation or payments may include any or a combination of the following:

(A) a concession or lease payment or other fee, which may be payable upfront or on a periodic basis or on another basis deemed appropriate by the transportation agency;

(B) sharing of revenues, if any, from the operation of the transportation project;

(C) sharing of project savings from the construction of the transportation project;

(D) payment for any services, materials, equipment, personnel, or other items provided by the transportation agency to the contractor under the public-private agreement or in connection with the transportation project; or

(E) other compensation set forth in the public-private agreement or otherwise deemed appropriate by the transportation agency.

(11) The date and terms of termination of the contractor's authority and duties under the public-private agreement and the circumstances under which the contractor's authority and duties may be terminated prior to that date.

(12) Reversion of the transportation project to the transportation agency at the termination or expiration of the public-private agreement.

(13) Rights and remedies of the transportation agency in the event that the contractor defaults or otherwise fails to comply with the terms of the public-private agreement.

(14) Procedures for the selection of professional design firms and subcontractors, which shall include procedures consistent with the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act for

the selection of professional design firms and may include, in the discretion of the transportation agency, procedures consistent with the low bid procurement procedures outlined in the Illinois Procurement Code for the selection of construction companies.

(15) Other terms, conditions, and provisions that the transportation agency believes are in the public interest.

(c) The transportation agency may fix and revise the amounts of user fees that a contractor may charge and collect for the use of any part of a transportation project in accordance with the public-private agreement. In fixing the amounts, the transportation agency may establish maximum amounts for the user fees and may provide that the maximums and any increases or decreases of those maximums shall be based upon the indices, methodologies, or other factors the transportation agency considers appropriate.

(d) A public-private agreement may:

(1) authorize the imposition of tolls in any manner determined appropriate by the transportation agency for the transportation project;

(2) authorize the contractor to adjust the user fees for the use of the transportation project, so long as the amounts charged and collected by the contractor do not exceed the maximum amounts established by the transportation agency under the public-private agreement ~~this Act~~;

(3) provide that any adjustment by the contractor permitted under paragraph (2) of this subsection (d) may be based on the indices, methodologies, or other factors described in the public-private agreement or approved by the transportation agency;

(4) authorize the contractor to charge and collect user fees through methods, including, but not limited to, automatic vehicle identification systems, electronic toll collection systems, and, to the extent permitted by law, global positioning system-based, photo-based, or video-based toll collection enforcement, provided that to the maximum extent feasible the contractor will (i) utilize open road tolling methods that allow payment of tolls at highway speeds and (ii) comply with United States Department of Transportation requirements and best practices with respect to tolling methods; and

(5) authorize the collection of user fees by a third party.

(e) In the public-private agreement, the transportation agency may agree to make grants or loans for the development or operation, or both, of the transportation project from time to time from amounts received from the federal government or any agency or instrumentality of the federal government or from any State or local agency.

(f) Upon the termination or expiration of the public-private agreement, including a termination for default,

the transportation agency shall have the right to take over the transportation project and to succeed to all of the right, title, and interest in the transportation project, ~~subject to any liens on revenues previously granted by the contractor to any person providing financing for the transportation project.~~ Upon termination or expiration of the public-private agreement relating to a transportation project undertaken by the Department, all real property acquired as a part of the transportation project shall be held in the name of the State of Illinois. Upon termination or expiration of the public-private agreement relating to a transportation project undertaken by the Authority, all real property acquired as a part of the transportation project shall be held in the name of the Authority.

(g) If a transportation agency elects to take over a transportation project as provided in subsection (f) of this Section, the transportation agency may do the following:

(1) develop, finance, or operate the project, including through a public-private agreement entered into in accordance with this Act; or

(2) impose, collect, retain, and use user fees, if any, for the project.

(h) If a transportation agency elects to take over a transportation project as provided in subsection (f) of this Section, the transportation agency may use the revenues, if any, for any lawful purpose, including to:

(1) make payments to individuals or entities in connection with any financing of the transportation project, including through a public-private agreement entered into in accordance with this Act;

(2) permit a contractor to receive some or all of the revenues under a public-private agreement entered into under this Act;

(3) pay development costs of the project;

(4) pay current operation costs of the project or facilities;

(5) pay the contractor for any compensation or payment owing upon termination; and

(6) pay for the development, financing, or operation of any other project or projects the transportation agency deems appropriate.

(i) The full faith and credit of the State or any political subdivision of the State or the transportation agency is not pledged to secure any financing of the contractor by the election to take over the transportation project. Assumption of development or operation, or both, of the transportation project does not obligate the State or any political subdivision of the State or the transportation agency to pay any obligation of the contractor.

(j) The transportation agency may enter into a public-private agreement with multiple approved proposers if the transportation agency determines in writing that it is in

the public interest to do so.

(k) A public-private agreement shall not include any provision under which the transportation agency agrees to restrict or to provide compensation to the private entity for the construction or operation of a competing transportation facility during the term of the public-private agreement.

(l) With respect to a public-private agreement entered into by the Department, the Department shall certify in its State budget request to the Governor each year the amount required by the Department during the next State fiscal year to enable the Department to make any payment obligated to be made by the Department pursuant to that public-private agreement, and the Governor shall include that amount in the State budget submitted to the General Assembly.

(Source: P.A. 97-502, eff. 8-23-11.)

(630 ILCS 5/40)

Sec. 40. Development and operations standards for transportation projects.

(a) The plans and specifications, if any, for each project developed under this Act must comply with:

(1) the transportation agency's standards for other projects of a similar nature or as otherwise provided in the public-private agreement;

(2) the Professional Engineering Practice Act of 1989, the Structural Engineering Practice Act of 1989, the

Illinois Architecture Practice Act of 1989, the requirements of Section 30-22 of the Illinois Procurement Code as they apply to responsible bidders, and the Illinois Professional Land Surveyor Act of 1989; and

(3) any other applicable State or federal standards.

(b) Each highway project constructed or operated under this Act is considered to be part of:

(1) the State highway system for purposes of identification, maintenance standards, and enforcement of traffic laws if the highway project is under the jurisdiction of the Department; or

(2) the toll highway system for purposes of identification, maintenance standards, and enforcement of traffic laws if the highway project is under the jurisdiction of the Authority.

(c) Any unit of local government or State agency may enter into agreements with the contractor for maintenance or other services under this Act.

(d) Any electronic toll collection system used on a toll highway, bridge, or tunnel as part of a transportation project must be compatible with the electronic toll collection system used by the Authority. The Authority is authorized to construct, operate, and maintain any electronic toll collection system used on a toll highway, bridge, or tunnel as part of a transportation project pursuant to an agreement with the transportation agency or the contractor responsible for the

transportation project. All private entities and public agencies shall have an equal opportunity to contract with the Authority to provide construction, operation, and maintenance services. In addition, during the procurement of a public-private agreement, these construction, operation, and maintenance services shall be available under identical terms to each private entity participating in the procurement. To the extent that a public-private agreement or an agreement with a public agency under subsection (c) of Section 20 of this Act authorizes tolling, the transportation agencies and any contractor under a public-private partnership or a public agency under an agreement pursuant to subsection (c) of Section 20 of this Act shall comply with subsection (a-5) of Section 10 of the Toll Highway Act as it relates to toll enforcement.

(Source: P.A. 97-502, eff. 8-23-11.)

(630 ILCS 5/45)

Sec. 45. Financial arrangements.

(a) The transportation agency may do any combination of applying for, executing, or endorsing applications submitted by private entities to obtain federal, State, or local credit assistance for transportation projects developed, financed, or operated under this Act, including loans, lines of credit, and guarantees.

(b) The transportation agency may take any action to obtain federal, State, or local assistance for a transportation

project that serves the public purpose of this Act and may enter into any contracts required to receive the federal assistance. The transportation agency may determine that it serves the public purpose of this Act for all or any portion of the costs of a transportation project to be paid, directly or indirectly, from the proceeds of a grant or loan, line of credit, or loan guarantee made by a local, State, or federal government or any agency or instrumentality of a local, State, or federal government. Such assistance may include, but not be limited to, federal credit assistance pursuant to the Transportation Infrastructure Finance and Innovation Act (TIFIA).

(c) The transportation agency may agree to make grants or loans for the development, financing, or operation of a transportation project from time to time, from amounts received from the federal, State, or local government or any agency or instrumentality of the federal, State, or local government.

(d) Any financing of a transportation project may be in the amounts and upon the terms and conditions that are determined by the parties to the public-private agreement.

(e) For the purpose of financing a transportation project, the contractor and the transportation agency may do the following:

- (1) propose to use any and all revenues that may be available to them;
- (2) enter into grant agreements;

(3) access any other funds available to the transportation agency; and

(4) accept grants from the transportation agency or other public or private agency or entity.

(f) For the purpose of financing a transportation project, public funds may be used and mixed and aggregated with funds provided by or on behalf of the contractor or other private entities.

(g) For the purpose of financing a transportation project, each transportation agency is authorized to do any combination of applying for, executing, or endorsing applications for an allocation of tax-exempt bond financing authorization provided by Section 142(m) of the United States Internal Revenue Code, as well as financing available under any other federal law or program.

(h) Any bonds, debt, or other securities or other financing issued by or on behalf of a contractor for the purposes of a project undertaken under this Act shall not be deemed to constitute a debt of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State.

(Source: P.A. 97-502, eff. 8-23-11.)

(630 ILCS 5/90 new)

Sec. 90. Public-Private Partnerships for Transportation Fund. The Public-Private Partnerships for Transportation Fund

is created as a special fund in the State treasury. Moneys in the Public-Private Partnerships for Transportation Fund shall be appropriated to the Department of Transportation to promote the development, financing, and operation of transportation facilities under this Act. Investment income which is attributable to the investment of moneys in the Public-Private Partnerships for Transportation Fund shall be retained in the Public-Private Partnerships for Transportation Fund.

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