



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3002

Introduced 2/15/2018, by Sen. Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

See Index

Creates the Innovations for Transportation Infrastructure Act. Contains a statement of legislative policy. Defines terms. Adds provisions governing: authorization of project delivery methods; preconditions to commencement of procurement; procurement; evaluation and selection of proposals; project records; confidentiality; public disclosure; design-build contracts; construction manager/general contractor contracts; funding and financing; minority, disadvantaged, and women-owned businesses; acquisition of property; federal requirements; powers of the Department of Transportation and the Illinois State Toll Highway Authority; and rulemaking. Makes corresponding changes in the Department of Transportation Law of the Civil Administrative Code of Illinois; Illinois Finance Authority Act; the Illinois Procurement Code; the Public Construction Bond Act; the Employment of Illinois Workers on Public Works Act; the Business Enterprise for Minorities, Women, and Persons with Disabilities Act; the Toll Highway Act; the Eminent Domain Act; and the Prevailing Wage Act. Provides that the provisions of the Act are severable. Effective immediately.

LRB100 17205 LNS 32361 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning transportation.

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

4 Section 1. Short title. This Act may be cited as the
5 Innovations for Transportation Infrastructure Act.

6 Section 5. Legislative policy.

7 (a) It is the public policy of the State of Illinois to
8 promote the development of infrastructure projects that serve
9 the needs of the public.

10 (b) The design-build project delivery method and
11 Construction Manager/General Contractor project delivery
12 method and use of Alternative Technical Concepts have the
13 potential to capture private sector innovation and safely
14 deliver infrastructure projects on more predictable schedules
15 and budgets. Earlier completion and lower cost for projects are
16 possible with the ability to shift or share risks with the
17 private sector that are generally retained by the public in the
18 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 to the greatest extent possible.

5 (e) The powers granted in this Act are in addition to any
6 other powers authorized under applicable law.

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

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

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

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

19 "Chief procurement officer" means the chief procurement
20 officer for the Transportation Agency.

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

24 "Construction Manager/General Contractor contract" means a
25 two-phase contract between the Transportation Agency and a

1 Construction Manager/General Contractor that includes a first
2 phase addressing preconstruction services and a second phase
3 addressing the construction of the transportation facility.

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

11 "Department" means the Illinois Department of
12 Transportation.

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

20 "Design-build contract" means a contract between the
21 Transportation Agency and a design-builder under which the
22 design-builder agrees to furnish architectural, surveying,
23 engineering, construction, and related services for a
24 transportation facility.

25 "Design-build project delivery method" means a method of
26 procurement and contracting that provides responsibility

1 within a single contract between the Transportation Agency and
2 a design-builder for the furnishing of architectural,
3 surveying, engineering, construction, and related services for
4 a transportation facility.

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

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

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

16 "Executive Director" means the Executive Director of the
17 Illinois State Toll Highway Authority.

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

22 "Preconstruction services" means all
23 non-construction-related services that a Construction
24 Manager/General Contractor is required to perform during the
25 first phase of a Construction Manager/General Contractor
26 contract, and may include, but is not limited to, giving advice

1 to the Transportation Agency regarding scheduling, work
2 sequencing, cost engineering, constructability, cost
3 estimating, and risk identification.

4 "Proposal" means a proposer's response to a request for
5 proposals.

6 "Proposer" means any individual, sole proprietorship,
7 firm, partnership, joint venture, corporation, professional
8 corporation, or other entity legally established to conduct
9 business in this State that proposes to be the design-builder
10 or Construction Manager/General Contractor for any
11 transportation facility under this Act.

12 "Qualifications" means a statement of qualifications
13 submitted by a proposer in response to a request for
14 qualifications.

15 "Request for proposals" means the document issued by the
16 Transportation Agency to solicit proposals and describe the
17 procurement process for a design-build contract or
18 Construction Manager/General Contractor contract in accordance
19 with the design-build project delivery method or the
20 Construction Manager/General Contractor project delivery
21 method, as applicable.

22 "Request for qualifications" means the document issued by
23 the Transportation Agency in the first phase of a two-phase
24 procurement to solicit qualifications from proposers in
25 accordance with the design-build project delivery method or the
26 Construction Manager/General Contractor project delivery

1 method, as applicable.

2 "Scope and performance requirements" means the activities,
3 constructed elements, and standards of performance the
4 Transportation Agency requires the design-builder or the
5 Construction Manager/General Contractor to comply with in the
6 development of the transportation facility, and may include,
7 but is not limited to, the intended usage, capacity, size,
8 scope, quality and performance standards, life-cycle costs,
9 preliminary engineering, design, and other requirements as
10 developed and determined by the Transportation Agency.

11 "Secretary" means the Secretary of the Illinois Department
12 of Transportation.

13 "Transportation Agency" means the Illinois Department of
14 Transportation or the Illinois State Toll Highway Authority.

15 "Transportation facility" means any new or existing
16 facility or group of facilities that are the subject of a
17 design-build contract or a Construction Manager/General
18 Contractor contract, and includes highways, roads, bridges,
19 tunnels, overpasses, bus ways, guideways, ferries, airports or
20 other aviation facilities, public transportation facilities,
21 vehicle parking facilities, port facilities, rail facilities,
22 stations, hubs, terminals, intermodal facilities, transit
23 facilities, or similar facilities used for the transportation
24 of persons or goods, together with any buildings, structures,
25 parking areas, appurtenances, intelligent transportation
26 systems, and other property or facilities related to the

1 operation or maintenance of these facilities.

2 Section 15. Authorization of project delivery methods.

3 (a) Notwithstanding any other law, and as authority
4 supplemental to its existing powers, the Transportation
5 Agency, in accordance with this Act, may use the design-build
6 project delivery method for transportation facilities if the
7 capital costs for transportation facilities delivered
8 utilizing the design-build project delivery method or
9 Construction Manager/General Contractor project delivery
10 method or Alternative Technical Concepts in a design-bid-build
11 project delivery method do not: (i) for transportation
12 facilities delivered by the Department, exceed 20% of the
13 Department's multi-year highway improvement program for any
14 5-year period with no one year period exceeding 30%; or (ii)
15 for transportation facilities delivered by the Authority,
16 exceed 20% of the Authority's annual improvement program. The
17 Transportation Agency shall make this calculation before
18 commencing the procurement. Notwithstanding any other law, and
19 as authority supplemental to its existing powers, the
20 Department, in accordance with this Act, may use the
21 Construction Manager/General Contractor project delivery
22 method for up to 2 transportation facilities. Before commencing
23 a procurement under this Act for either a design-build contract
24 or a Construction Manager/General Contractor contract, the
25 Transportation Agency shall first undertake an analysis and

1 make a written determination that it is in the best interests
2 of this State to use the selected delivery method for that
3 transportation facility. The analysis and determination shall
4 discuss the design-build project delivery method or
5 Construction Manager/General Contractor project delivery
6 method's impact on the anticipated schedule, completion date,
7 and project costs. The best interests of the State analysis
8 shall be made available to the public.

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

13 (c) The Architectural, Engineering, and Land Surveying
14 Qualifications Based Selection Act does not apply to
15 procurements under this Act.

16 Section 20. Preconditions to commencement of procurement.

17 If the Transportation Agency determines to use the
18 design-build project delivery method or the Construction
19 Manager/General Contractor project delivery method for a
20 particular transportation facility, the Transportation Agency
21 may not commence a procurement for the transportation facility
22 until the Transportation Agency has satisfied the following
23 requirements:

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

25 (A) the Transportation Agency includes the

1 transportation facility in the Transportation Agency's
2 respective multi-year highway improvement program and
3 designates it as a design-build project delivery method
4 project or Construction Manager/General Contractor
5 project;

6 (B) the Transportation Agency issues a notice of intent
7 to receive qualifications, that includes a description of
8 the proposed procurement and transportation facility, at
9 least 14 days before the issuance of the request for
10 qualifications, and for a Department-issued notice of
11 intent publishes the notice in the Illinois Transportation
12 Procurement Bulletin and for an Authority-issued notice of
13 intent publishes the notice in the Illinois Procurement
14 Bulletin; or

15 (C) for a single-phase procurement authorized under
16 subsection (a) of Section 25 of this Act, the
17 Transportation Agency issues a notice of intent to receive
18 proposals, that includes a description of the proposed
19 procurement and transportation facility, at least 14 days
20 before the issuance of the request for proposals, and for a
21 Department-issued notice of intent publishes the notice in
22 the Illinois Transportation Procurement Bulletin and for
23 an Authority-issued notice of intent publishes the notice
24 in the Illinois Procurement Bulletin; and

25 (2) the Transportation Agency uses its best efforts to
26 ensure that the transportation facility is consistent with the

1 regional plan in existence at the time of any metropolitan
2 planning organization in which the boundaries of the
3 transportation facility is located, or any other
4 publicly-approved plan.

5 Section 25. Procurement process.

6 (a) The Transportation Agency may solicit a proposer with
7 which to enter into a design-build contract or Construction
8 Manager/General Contractor contract, as applicable, by using,
9 without limitation, one or more requests for qualifications, a
10 shortlisting of the most highly qualified proposers, requests
11 for proposals, and negotiations. The Transportation Agency
12 shall use a two-phase procurement for a design-build contract
13 to select the successful proposer, except that the
14 Transportation Agency may use a single-phase procurement if the
15 transportation facility is estimated to cost less than
16 \$5,000,000 or the Secretary or the Executive Director makes a
17 written determination that the Transportation Agency may use a
18 single-phase procurement for a particular transportation
19 facility. In a two-phase procurement, the Transportation
20 Agency shall use the first phase to evaluate and shortlist the
21 most highly qualified proposers based on a proposer's
22 qualifications, and then use the second phase to evaluate and
23 select a proposer based on proposals submitted by the
24 shortlisted proposers. During the first phase of a two-phase
25 procurement, the Transportation Agency shall not consider

1 price proposals to make its shortlist decision. In a
2 single-phase procurement, the Transportation Agency shall
3 solicit proposers with a request for proposals, and shall
4 evaluate and select a proposer based on those proposals.

5 (b) The request for qualifications may contain any terms
6 deemed appropriate by the Transportation Agency including,
7 without limitation, the following:

8 (1) a description of the anticipated scope of work for
9 the transportation facility;

10 (2) a requirement that the proposer identify certain
11 key personnel, and for design-build contracts certain key
12 firms, the experience of the personnel and firms, and the
13 conditions on which identified personnel and firms can be
14 replaced;

15 (3) the evaluation criteria for the qualifications and
16 the relative importance of those criteria; these
17 evaluation criteria may address, without limitation, the
18 proposer's technical and financial qualifications, such as
19 specialized experience, technical competence, capability
20 to perform, financial capacity, the proposer's workload,
21 local office presence, past performance including the
22 proposer's safety record, and any other
23 qualifications-based factors;

24 (4) the Transportation Agency's prequalification,
25 licensing, and registration requirements, including any
26 requirements from the Professional Engineering Practice

1 Act of 1989, the Illinois Architecture Practice Act of
2 1989, the Structural Engineering Practice Act of 1989, and
3 the Illinois Professional Land Surveyor Act of 1989, except
4 that nothing contained herein precludes the Transportation
5 Agency's use of additional prequalification criteria or
6 pass-fail evaluation factors addressing minimum levels of
7 technical experience or financial capabilities;

8 (5) the maximum number of proposers the Transportation
9 Agency will shortlist to submit proposals; and

10 (6) any other relevant information the Transportation
11 Agency deems appropriate.

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

24 (d) The request for proposals may contain any terms deemed
25 appropriate by the Transportation Agency including, without
26 limitation, the following:

- 1 (1) the form and amount of required bid security;
- 2 (2) the terms of the design-build contract or
3 Construction Manager/General Contractor contract,
4 including, but not limited to, scope and performance
5 requirements, schedule or completion date requirements,
6 subcontractor requirements, payment and performance
7 security requirements, and insurance requirements;
- 8 (3) the requirements for the technical component of the
9 proposal, including a description of the level of design,
10 scope and type of renderings, drawings, and specifications
11 to be provided in the proposals;
- 12 (4) the requirements for the price component of the
13 proposal, which for Construction Manager/General
14 Contractor contracts may include a requirement for the
15 proposer to submit a lump sum price for the direct costs to
16 perform the required preconstruction services and
17 percentage mark-up on those direct costs;
- 18 (5) the evaluation criteria for the proposals,
19 including technical criteria, innovation, and schedule,
20 and the relative importance of those criteria, as the
21 Transportation Agency deems appropriate;
- 22 (6) a process for the Transportation Agency to review
23 and accept Alternative Technical Concepts;
- 24 (7) requirements regarding the proposer's
25 qualifications; and
- 26 (8) 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 in
12 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 before the due
16 date for proposals; or (2) each unsuccessful proposer that
17 submits a responsive proposal. The Transportation Agency may
18 pay a stipend only to those proposers who grant to the
19 Transportation Agency the right to use any work product
20 contained in the unsuccessful proposer's proposal and other
21 proposal-related submissions or, if the Transportation Agency
22 cancels the procurement before the due date for proposals, any
23 work product developed before cancellation, including
24 technologies, techniques, methods, processes, and information
25 contained in the recipient's design for the transportation
26 facility.

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

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

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

25 (2) bid security in the form and amount designated in
26 the request for proposals.

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

12 Section 30. Evaluation committee.

13 (a) The Transportation Agency shall establish one or more
14 evaluation committees to assist in selecting a design-builder
15 and a Construction Manager/General Contractor. The
16 Transportation Agency shall, in its sole discretion, determine
17 the appropriate size and composition of the evaluation
18 committee; however, at least half of the committee must be
19 licensed design professionals.

20 (b) The Transportation Agency may establish an evaluation
21 committee for a set term or for the procurement of a particular
22 transportation facility.

23 (c) Once the Transportation Agency identifies the
24 proposers for a transportation facility, each member of an
25 evaluation committee must certify that no conflict of interest

1 exists between the member and the proposers. If the
2 Transportation Agency, after consultation with the chief
3 procurement officer, determines that an actual conflict
4 exists, the member shall not participate on the evaluation
5 committee for that procurement and the Transportation Agency
6 shall appoint a replacement member on either a permanent or
7 temporary basis.

8 Section 35. Procedures for selection. The Transportation
9 Agency shall review, evaluate, score, and rank proposals and
10 determine which proposal offers the best value to the public
11 based on the evaluation criteria set forth in the request for
12 proposals. The Transportation Agency shall award the contract
13 based on this determination. Notwithstanding other provisions
14 of this Section, if for any reason the proposer awarded the
15 contract is unable or unwilling to execute the contract,
16 including the failure of the proposer and the Transportation
17 Agency to successfully complete negotiations, if any, of the
18 contract, the Transportation Agency may award the contract to
19 the proposer whose proposal the Transportation Agency
20 determines offers the public the next best value.

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

23 (a) The Transportation Agency shall maintain all written
24 decisions, qualification and proposal evaluations, scoring

1 documents, selection evaluations, proposals, and procurement
2 documents in a procurement file maintained by the
3 Transportation Agency.

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

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

13 (2) identifies the data or other materials for which
14 protection is sought;

15 (3) states the statutory or regulatory basis for the
16 protection;

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

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

24 (c) Notwithstanding any other provision of law, in order to
25 properly balance the need to maximize competition under this
26 Act with the need to create a transparent procurement process,

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

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

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

1 available to the design-builder and the Transportation
2 Agency in the event of a default or delay;

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

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

8 (7) required performance and payment security;

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

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

13 Section 50. Construction Manager/General Contractor
14 contract.

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

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

25 (1) the Construction Manager/General Contractor's

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

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

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

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

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

25 (4) grounds for termination of the Construction
26 Manager/General Contractor contract, including the

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

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

11 (1) liability for damages and nonperformance;

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

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

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

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

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

26 (d) If the Construction Manager/General Contractor

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

10 Section 55. Funding and financing.

11 (a) The Transportation Agency may use any lawful source of
12 funding and financing to compensate a design-builder and
13 Construction Manager/General Contractor for work and services
14 performed under a design-build contract or Construction
15 Manager/General Contractor contract, as applicable, and the
16 Transportation Agency may combine federal, State, local, and
17 private funds to finance a transportation facility.

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

23 Section 56. Utilization requirements. Design-builder and
24 Construction Manager/General Contractor projects shall comply

1 with Section 2-105 of the Illinois Human Rights Act and all
2 applicable laws and rules that establish standards and
3 procedures for the utilization of minority, disadvantaged, and
4 women-owned businesses, including, but not limited to, the
5 Business Enterprise for Minorities, Women, and Persons with
6 Disabilities Act.

7 Section 60. Acquisition of property and related
8 agreements. The Transportation Agency may exercise any and all
9 powers of condemnation or eminent domain, including quick-take
10 powers, to acquire lands or estates or interests in land for a
11 transportation facility under this Act to the extent the
12 Transportation Agency finds that the action serves the public
13 purpose of this Act and deems the action appropriate in the
14 exercise of its powers under this Act. In addition, the
15 Transportation Agency and a design-builder or Construction
16 Manager/General Contractor may enter into leases, licenses,
17 easements, and other grants of property interests that the
18 Transportation Agency determines are necessary to deliver a
19 transportation facility under this Act.

20 Section 65. Federal requirements. In the procurement of
21 design-build contracts and Construction Manager/General
22 Contractor contracts, the Transportation Agency shall, to the
23 extent applicable, comply with federal law and regulations and
24 take all necessary steps to adapt its rules, policies, and

1 procedures to remain eligible for federal aid.

2 Section 70. Powers. The powers granted to the
3 Transportation Agency under this Act, including the power to
4 procure and enter into design-build contracts and Construction
5 Manager/General Contractor contracts, shall be liberally
6 construed to accomplish its purpose, are in addition to any
7 existing powers of the Transportation Agency, and shall not
8 affect or impair any other powers authorized under applicable
9 law.

10 Section 75. Rulemaking.

11 (a) The Illinois Administrative Procedure Act applies to
12 all administrative rules and procedures of the Transportation
13 Agency under this Act, except that nothing in this Act shall be
14 construed to render any prequalification or other
15 responsibility criteria as a "license" or "licensing" under
16 that Act.

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

20 Section 905. The Department of Transportation Law of the
21 Civil Administrative Code of Illinois is amended by adding
22 Section 2705-233 as follows:

1 (20 ILCS 2705/2705-233 new)

2 Sec. 2705-233. Innovations for Transportation
3 Infrastructure Act. The Department may exercise all powers
4 granted to it under the Innovations for Transportation
5 Infrastructure Act, including, but not limited to, the power to
6 enter into all contracts or agreements necessary or incidental
7 to the performance of its powers under that Act, and powers
8 related to any transportation facility implemented under that
9 Act.

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

12 (20 ILCS 3501/825-108 new)

13 Sec. 825-108. Transportation project financing. For the
14 purpose of financing a transportation facility undertaken
15 under the Innovations for Transportation Infrastructure Act,
16 the Authority may apply for an allocation of tax-exempt bond
17 financing authorization provided by subsection (m) of Section
18 142 of the United States Internal Revenue Code, as well as
19 financing available under any other federal law or program.

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

22 (30 ILCS 500/1-10.5 new)

1 Sec. 1-10.5. Alternative Technical Concepts.

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

6 (b) Notwithstanding subsection (b) of Section 1-10 of this
7 Code, the Department of Transportation may allow bidders and
8 proposers to submit Alternative Technical Concepts in their
9 bids and proposals, if the Department determines that the
10 Alternative Technical Concepts provide an equal or better
11 solution than the underlying technical requirements applicable
12 to the work. Notwithstanding the foregoing, for projects the
13 Department delivers using the design-bid-build project
14 delivery method, the Department shall use the Alternative
15 Technical Concepts process for no more than 3 projects. If the
16 Department allows bidders or proposers for a particular
17 contract to submit Alternative Technical Concepts, the
18 Department shall describe the process for submission and
19 evaluation of Alternative Technical Concepts in the
20 procurement documents for that contract, including the
21 potential use of confidential meetings and the exchange of
22 confidential information with bidders and proposers to review
23 and discuss potential or proposed Alternative Technical
24 Concepts.

25 Section 920. The Public Construction Bond Act is amended by

1 adding Section 1.9 as follows:

2 (30 ILCS 550/1.9 new)

3 Sec. 1.9. Design-build contracts and Construction
4 Manager/General Contractor contracts. This Act applies to any
5 design-build contract or Construction Manager/General
6 Contractor contract entered into under the Innovations for
7 Transportation Infrastructure Act.

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

10 (30 ILCS 570/2.8 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 930. The Business Enterprise for Minorities,
17 Women, and Persons with Disabilities Act is amended by adding
18 Section 2.8 as follows:

19 (30 ILCS 575/2.8 new)

20 Sec. 2.8. Design-build and Construction Manager/General
21 Contractor contracts. This Act applies to any design-build

1 contracts and Construction Manager/General Contractor
2 contracts entered into under the Innovations for
3 Transportation Infrastructure Act.

4 Section 935. The Toll Highway Act is amended by adding
5 Section 11.2 as follows:

6 (605 ILCS 10/11.2 new)

7 Sec. 11.2. Innovations for Transportation Infrastructure
8 Act. The Authority may exercise all powers granted to it under
9 the Innovations for Transportation Infrastructure Act,
10 including, but not limited to, the power to enter into all
11 contracts or agreements necessary to perform its powers under
12 that Act, and any powers related to a transportation facility
13 implemented under that Act.

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

16 (735 ILCS 30/15-5-48 new)

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

20 The Innovations for Transportation Infrastructure Act; for
21 the purposes of constructing a transportation facility under
22 the Act.

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

3 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

4 Sec. 2. This Act applies to the wages of laborers,
5 mechanics and other workers employed in any public works, as
6 hereinafter defined, by any public body and to anyone under
7 contracts for public works. This includes any maintenance,
8 repair, assembly, or disassembly work performed on equipment
9 whether owned, leased, or rented.

10 As used in this Act, unless the context indicates
11 otherwise:

12 "Public works" means all fixed works constructed or
13 demolished by any public body, or paid for wholly or in part
14 out of public funds. "Public works" as defined herein includes
15 all projects financed in whole or in part with bonds, grants,
16 loans, or other funds made available by or through the State or
17 any of its political subdivisions, including but not limited
18 to: bonds issued under the Industrial Project Revenue Bond Act
19 (Article 11, Division 74 of the Illinois Municipal Code), the
20 Industrial Building Revenue Bond Act, the Illinois Finance
21 Authority Act, the Illinois Sports Facilities Authority Act, or
22 the Build Illinois Bond Act; loans or other funds made
23 available pursuant to the Build Illinois Act; loans or other
24 funds made available pursuant to the Riverfront Development

1 Fund under Section 10-15 of the River Edge Redevelopment Zone
2 Act; or funds from the Fund for Illinois' Future under Section
3 6z-47 of the State Finance Act, funds for school construction
4 under Section 5 of the General Obligation Bond Act, funds
5 authorized under Section 3 of the School Construction Bond Act,
6 funds for school infrastructure under Section 6z-45 of the
7 State Finance Act, and funds for transportation purposes under
8 Section 4 of the General Obligation Bond Act. "Public works"
9 also includes (i) all projects financed in whole or in part
10 with funds from the Department of Commerce and Economic
11 Opportunity under the Illinois Renewable Fuels Development
12 Program Act for which there is no project labor agreement; (ii)
13 all work performed pursuant to a public private agreement under
14 the Public Private Agreements for the Illiana Expressway Act or
15 the Public-Private Agreements for the South Suburban Airport
16 Act; ~~and~~ (iii) all projects undertaken under a public-private
17 agreement under the Public-Private Partnerships for
18 Transportation Act; and (iv) all transportation facilities
19 undertaken under a design-build contract or a Construction
20 Manager/General Contractor contract under the Innovations for
21 Transportation Infrastructure Act. "Public works" also
22 includes all projects at leased facility property used for
23 airport purposes under Section 35 of the Local Government
24 Facility Lease Act. "Public works" also includes the
25 construction of a new wind power facility by a business
26 designated as a High Impact Business under Section 5.5(a) (3) (E)

1 of the Illinois Enterprise Zone Act. "Public works" does not
2 include work done directly by any public utility company,
3 whether or not done under public supervision or direction, or
4 paid for wholly or in part out of public funds. "Public works"
5 also includes any corrective action performed pursuant to Title
6 XVI of the Environmental Protection Act for which payment from
7 the Underground Storage Tank Fund is requested. "Public works"
8 does not include projects undertaken by the owner at an
9 owner-occupied single-family residence or at an owner-occupied
10 unit of a multi-family residence. "Public works" does not
11 include work performed for soil and water conservation purposes
12 on agricultural lands, whether or not done under public
13 supervision or paid for wholly or in part out of public funds,
14 done directly by an owner or person who has legal control of
15 those lands.

16 "Construction" means all work on public works involving
17 laborers, workers or mechanics. This includes any maintenance,
18 repair, assembly, or disassembly work performed on equipment
19 whether owned, leased, or rented.

20 "Locality" means the county where the physical work upon
21 public works is performed, except (1) that if there is not
22 available in the county a sufficient number of competent
23 skilled laborers, workers and mechanics to construct the public
24 works efficiently and properly, "locality" includes any other
25 county nearest the one in which the work or construction is to
26 be performed and from which such persons may be obtained in

1 sufficient numbers to perform the work and (2) that, with
2 respect to contracts for highway work with the Department of
3 Transportation of this State, "locality" may at the discretion
4 of the Secretary of the Department of Transportation be
5 construed to include two or more adjacent counties from which
6 workers may be accessible for work on such construction.

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

16 The terms "general prevailing rate of hourly wages",
17 "general prevailing rate of wages" or "prevailing rate of
18 wages" when used in this Act mean the hourly cash wages plus
19 annualized fringe benefits for training and apprenticeship
20 programs approved by the U.S. Department of Labor, Bureau of
21 Apprenticeship and Training, health and welfare, insurance,
22 vacations and pensions paid generally, in the locality in which
23 the work is being performed, to employees engaged in work of a
24 similar character on public works.

25 (Source: P.A. 97-502, eff. 8-23-11; 98-109, eff. 7-25-13;
26 98-482, eff. 1-1-14; 98-740, eff. 7-16-14; 98-756, eff.

1 7-16-14.)

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

4 Section 999. Effective date. This Act takes effect upon
5 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 20 ILCS 2705/2705-233 new

5 20 ILCS 3501/825-108 new

6 30 ILCS 500/1-10.5 new

7 30 ILCS 550/1.9 new

8 30 ILCS 570/2.8 new

9 30 ILCS 575/2.8 new

10 605 ILCS 10/11.2 new

11 735 ILCS 30/15-5-48 new

12 820 ILCS 130/2 from Ch. 48, par. 39s-2