

to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

*Prequalification* means the contracting agency's process for determining whether a firm is fundamentally qualified to compete for a certain project or class of projects. The prequalification process may be based on financial, management and other types of qualitative data. Prequalification should be distinguished from short listing.

*Price proposal* means the price submitted by the offeror to provide the required design and construction services.

*Proposal modification* means a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

*Proposal revision* means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

*Qualified project* means any design-build project with a total estimated cost greater than \$50 million or an intelligent transportation system project greater than \$5 million (23 U.S.C. 112 (b)(3)(C)).

*Request for Proposals (RFP)* means the document that describes the procurement process, forms the basis for the final proposals and may potentially become an element in the contract.

*Request for Qualification (RFQ)* means the document issued by the owner in Phase I of the two-phased selection process. It typically describes the project in enough detail to let potential offerors determine if they wish to compete and forms the basis for requesting qualifications submissions from which the most highly qualified offerors can be identified.

*Short listing* means the narrowing of the field of offerors through the selection of the most qualified offerors who have responded to an RFQ.

*Single-phase selection process* means a procurement process where price and/or technical proposals are submitted in

response to an RFP. Short listing is not used.

*Solicitation* means a public notification of an owner's need for information, qualifications, or proposals related to identified services.

*Stipend* means a monetary amount sometimes paid to unsuccessful offerors.

*Technical proposal* means that portion of a design-build proposal which contains design solutions and other qualitative factors that are provided in response to the RFP document.

*Tradeoff* means an analysis technique involving a comparison of price and non-price factors to determine the best value when considering the selection of other than the lowest priced proposal.

*Two-phase selection process* means a procurement process in which the first phase consists of short listing (based on qualifications submitted in response to an RFQ) and the second phase consists of the submission of price and technical proposals in response to an RFP.

*Weakness* means a flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

*Weighted criteria process* means a form of best value selection in which maximum point values are pre-established for qualitative and price components, and award is based upon high total points earned by the offerors.

#### **§ 636.104 Does this part apply to all Federal-aid design-build projects?**

The provisions of this part apply to all Federal-aid design-build projects within the highway right-of-way or linked to a Federal-aid highway project (*i.e.*, the project would not exist without another Federal-aid highway project). Projects that are not located within the highway right-of-way, and not linked to a Federal-aid highway project may utilize State-approved procedures.

#### **§ 636.105 Is the FHWA requiring the use of design-build?**

No, the FHWA is neither requiring nor promoting the use of the design-build contracting method. The design-

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build contracting technique is optional.

### § 636.106 What type of projects may be used with design-build contracting?

You may use the design-build contracting technique for any qualified or non-qualified project which you deem to be appropriate on the basis of project delivery time, cost, construction schedule and/or quality.

### § 636.107 Does the definition of a qualified project limit the use of design-build contracting?

(a) No, the use of the term “qualified project” does not limit the use of design-build contracting. It merely determines the FHWA’s procedures for approval. The FHWA Division Administrator may approve the design-build method for “qualified projects” which meet the requirements of this part.

(b) The FHWA Division Administrator may also approve other design-build projects (which do not meet the “qualified projects” definition) by using Special Experimental Projects No. 14 (SEP-14), “Innovative Contracting Practices,”<sup>1</sup> provided the project meets the requirements of this part. Projects which do not meet the requirements of this part (either “qualified or non-qualified” projects) must be submitted to the FHWA Headquarters for concept approval.

### § 636.108 How does the definition of a qualified project apply to ITS projects?

For the purpose of this part, a Federal-aid ITS design-build project meets the criteria of a “qualified project” if:

(a) A majority of the scope of services provides ITS services (at least 50 percent of the scope of work is related to ITS services); and

(b) The estimated contract value exceeds \$5 million.

<sup>1</sup>Information concerning Special Experimental Project No. 14 (SEP-14), “Innovative Contracting Practices,” is available on FHWA’s home page: <http://www.fhwa.dot.gov>. Additional information may be obtained from the FHWA Division Administrator in each State.

## 23 CFR Ch. I (4–1–03 Edition)

### § 636.109 How does the NEPA review process relate to the design-build procurement process?

In terms of the design-build procurement process:

(a) The RFQ solicitation may be released prior to the conclusion of the NEPA review process as long as the RFQ solicitation informs proposers of the general status of the NEPA process.

(b) The RFP must not be released prior to the conclusion of the NEPA process. The NEPA review process is concluded with either a Categorical Exclusion classification, an approved Finding of No Significant Impact, or an approved Record of Decision as defined in 23 CFR 771.113(a).

(c) The RFP must address how environmental commitments and mitigation measures identified during the NEPA process will be implemented.

### § 636.110 What procedures may be used for solicitations and receipt of proposals?

You may use your own procedures for the solicitation and receipt of proposals and information including the following:

(a) Exchanges with industry before receipt of proposals;

(b) RFQ, RFP and contract format;

(c) Solicitation schedules;

(d) Lists of forms, documents, exhibits, and other attachments;

(e) Representations and instructions;

(f) Advertisement and amendments;

(g) Handling proposals and information; and

(h) Submission, modification, revisions and withdrawal of proposals.

### § 636.111 Can oral presentations be used during the procurement process?

(a) Yes, the use of oral presentations as a substitute for portions of a written proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, however, you must comply with the appropriate State procurement integrity standards.

(b) Oral presentations may substitute for, or augment, written information. You must maintain a record of oral