

**§ 636.201**

Bacon minimum wage rate requirements, for federally funded construction or design-build contracts under the public-private agreement.

[67 FR 75926, Dec. 10, 2002, as amended at 72 FR 45337, Aug. 14, 2007]

**Subpart B—Selection Procedures, Award Criteria**

**§ 636.201 What selection procedures and award criteria may be used?**

You should consider using two-phase selection procedures for all design-build projects. However, if you do not believe two-phase selection procedures are appropriate for your project (based on the criteria in § 636.202), you may use a single phase selection procedure or the modified-design-build contracting method. The following procedures are available:

| Selection procedure                                       | Criteria for using a selection procedure       | Award criteria options  |
|---|--|---|
| (a) Two-Phase Selection Procedures (RFQ followed by RFP). | § 636.202 .....                                | Lowest price, Adjusted low-bid (price per quality point), meets criteria/low bid, weighted criteria process, fixed price/best design, best value. |
| (b) Single Phase (RFP).                                   | Project not meeting the criteria in § 636.202. | All of the award criteria in item (a) of this table.  |
| (c) Modified Design-Build (may be one or two phases).     | Any project .....                              | Lowest price technically acceptable.  |

**§ 636.202 When are two-phase design-build selection procedures appropriate?**

You may consider the following criteria in deciding whether two-phase selection procedures are appropriate. A negative response may indicate that two-phase selection procedures are not appropriate.

- (a) Are three or more offers anticipated?
- (b) Will offerors be expected to perform substantial design work before developing price proposals?
- (c) Will offerors incur a substantial expense in preparing proposals?
- (d) Have you identified and analyzed other contributing factors, including:

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- (1) The extent to which you have defined the project requirements?
- (2) The time constraints for delivery of the project?
- (3) The capability and experience of potential contractors?
- (4) Your capability to manage the two-phase selection process?
- (5) Other criteria that you may consider appropriate?

**§ 636.203 What are the elements of two-phase selection procedures for competitive proposals?**

The first phase consists of short listing based on a RFQ. The second phase consists of the receipt and evaluation of price and technical proposals in response to a RFP.

**§ 636.204 What items may be included in a phase-one solicitation?**

You may consider including the following items in any phase-one solicitation:

- (a) The scope of work;
- (b) The phase-one evaluation factors and their relative weights, including:
  - (1) Technical approach (but not detailed design or technical information);
  - (2) Technical qualifications, such as—
    - (i) Specialized experience and technical competence;
    - (ii) Capability to perform (including key personnel); and
    - (iii) Past performance of the members of the offeror’s team (including the architect-engineer and construction members);
  - (3) Other appropriate factors (excluding cost or price related factors, which are not permitted in phase-one);
- (c) Phase-two evaluation factors; and
- (d) A statement of the maximum number of offerors that will be short listed to submit phase-two proposals.

**§ 636.205 Can past performance be used as an evaluation criteria?**

- (a) Yes, past performance information is one indicator of an offeror’s ability to perform the contract successfully. Past performance information may be used as an evaluation criteria in either phase-one or phase-two solicitations. If you elect to use past performance criteria, the currency and relevance of the information, source of the information, context of the data,

and general trends in contractor's performance may be considered.

(b) Describe your approach for evaluating past performance in the solicitation, including your policy for evaluating offerors with no relevant performance history. You should provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the current solicitation.

(c) If you elect to request past performance information, the solicitation should also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. You may consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. You may use your discretion in determining the relevance of similar past performance information.

(d) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the current acquisition.

**§ 636.206 How do I evaluate offerors who do not have a record of relevant past performance?**

In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

**§ 636.207 Is there a limit on short listed firms?**

Normally, three to five firms are short listed, however, the maximum number specified shall not exceed five unless you determine, for that particular solicitation, that a number greater than five is in your interest and is consistent with the purposes and objectives of two-phase design-build contracting.

**§ 636.208 May I use my existing prequalification procedures with design-build contracts?**

Yes, you may use your existing prequalification procedures for either construction or engineering design firms as a supplement to the procedures in this part.

**§ 636.209 What items must be included in a phase-two solicitation?**

(a) You must include the requirements for technical proposals and price proposals in the phase-two solicitation. All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the solicitation. Use your own procedures for the solicitation as long as it complies the requirements of this part.

(b) At your discretion, you may allow proposers to submit alternate technical concepts in their proposals as long as these alternate concepts do not conflict with criteria agreed upon in the environmental decision making process. Alternate technical concept proposals may supplement, but not substitute for base proposals that respond to the RFP requirements.

**§ 636.210 What requirements apply to projects which use the modified design-build procedure?**

(a) Modified design-build selection procedures (lowest price technically acceptable source selection process) may be used for any project.

(b) The solicitation must clearly state the following:

(1) The identification of evaluation factors and significant subfactors that establish the requirements of acceptability.

(2) That award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors.

(c) The contracting agency may forgo a short listing process and advertise for the receipt of proposals from all responsible offerors. The contract is then awarded to the lowest responsive bidder.

(d) Tradeoffs are not permitted, however, you may incorporate cost-plus-time bidding procedures (A+B bidding),