

**§ 636.513 Are limited negotiations allowed prior to contract execution?**

(a) Yes, after the source selection but prior to contract execution, you may conduct limited negotiations with the selected design-builder to clarify any remaining issues regarding scope, schedule, financing or any other information provided by that offeror. You must comply with the provisions of § 636.507 in the exchange of this information.

(b) Limited negotiations conducted under this section may include negotiations necessary to incorporate the ideas and concepts from unsuccessful offerors into the contract if a stipend is offered by the contracting agency and accepted by the unsuccessful offeror and if the requirements of section 636.113 are met.

[67 FR 75926, Dec. 10, 2002, as amended at 73 FR 77502, Dec. 19, 2008]

**§ 636.514 How may I provide notifications and debriefings?**

You may provide pre-award or post-award notifications in accordance with State approved procedures. If an offeror requests a debriefing, you may provide pre-award or post-award debriefings in accordance with State approved procedures.

**PART 637—CONSTRUCTION INSPECTION AND APPROVAL**

**Subpart A [Reserved]**

**Subpart B—Quality Assurance Procedures for Construction**

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**APPENDIX A TO SUBPART B OF PART 637—GUIDE LETTER OF CERTIFICATION BY STATE ENGINEER**

**AUTHORITY:** Sec. 1307, Pub. L. 105-178, 112 Stat. 107; 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

**SOURCE:** 60 FR 33717, June 29, 1995, unless otherwise noted.

**EDITORIAL NOTE:** Nomenclature changes to part 637 appear at 67 FR 75934, Dec. 10, 2002.

**Subpart A [Reserved]**

**Subpart B—Quality Assurance Procedures for Construction**

**§ 637.201 Purpose.**

To prescribe policies, procedures, and guidelines to assure the quality of materials and construction in all Federal-aid highway projects on the National Highway System.

**§ 637.203 Definitions.**

*Acceptance program.* All factors that comprise the State transportation department's (STD) determination of the quality of the product as specified in the contract requirements. These factors include verification sampling, testing, and inspection and may include results of quality control sampling and testing.

*Independent assurance program.* Activities that are an unbiased and independent evaluation of all the sampling and testing procedures used in the acceptance program. Test procedures used in the acceptance program which are performed in the STD's central laboratory would not be covered by an independent assurance program.

*Proficiency samples.* Homogeneous samples that are distributed and tested by two or more laboratories. The test results are compared to assure that the laboratories are obtaining the same results.

*Qualified laboratories.* Laboratories that are capable as defined by appropriate programs established by each STD. As a minimum, the qualification program shall include provisions for checking test equipment and the laboratory shall keep records of calibration checks.

*Qualified sampling and testing personnel.* Personnel who are capable as defined by appropriate programs established by each STD.

*Quality assurance.* All those planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality.

*Quality control.* All contractor/vendor operational techniques and activities that are performed or conducted to fulfill the contract requirements.

**§ 637.205**

**23 CFR Ch. I (4–1–10 Edition)**

*Random sample.* A sample drawn from a lot in which each increment in the lot has an equal probability of being chosen.

*Vendor.* A supplier of project-produced material that is not the contractor.

*Verification sampling and testing.* Sampling and testing performed to validate the quality of the product.

**§ 637.205 Policy.**

(a) *Quality assurance program.* Each STD shall develop a quality assurance program which will assure that the materials and workmanship incorporated into each Federal-aid highway construction project on the NHS are in conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in § 637.207 and be approved by the FHWA.

(b) *STD capabilities.* The STD shall maintain an adequate, qualified staff to administer its quality assurance program. The State shall also maintain a central laboratory. The State's central laboratory shall meet the requirements in § 637.209(a)(2).

(c) *Independent assurance program.* Independent assurance samples and tests or other procedures shall be performed by qualified sampling and testing personnel employed by the STD or its designated agent.

(d) *Verification sampling and testing.* The verification sampling and testing are to be performed by qualified testing personnel employed by the STD or its designated agent, excluding the contractor and vendor.

(e) *Random samples.* All samples used for quality control and verification sampling and testing shall be random samples.

**§ 637.207 Quality assurance program.**

(a) Each STD's quality assurance program shall provide for an acceptance program and an independent assurance (IA) program consisting of the following:

(1) Acceptance program.

(i) Each STD's acceptance program shall consist of the following:

(A) Frequency guide schedules for verification sampling and testing which will give general guidance to

personnel responsible for the program and allow adaptation to specific project conditions and needs.

(B) Identification of the specific location in the construction or production operation at which verification sampling and testing is to be accomplished.

(C) Identification of the specific attributes to be inspected which reflect the quality of the finished product.

(ii) Quality control sampling and testing results may be used as part of the acceptance decision provided that:

(A) The sampling and testing has been performed by qualified laboratories and qualified sampling and testing personnel.

(B) The quality of the material has been validated by the verification sampling and testing. The verification testing shall be performed on samples that are taken independently of the quality control samples.

(C) The quality control sampling and testing is evaluated by an IA program.

(iii) If the results from the quality control sampling and testing are used in the acceptance program, the STD shall establish a dispute resolution system. The dispute resolution system shall address the resolution of discrepancies occurring between the verification sampling and testing and the quality control sampling and testing. The dispute resolution system may be administered entirely within the STD.

(iv) In the case of a design-build project on the National Highway System, warranties may be used where appropriate. See 23 CFR 635.413(e) for specific requirements.

(2) The IA program shall evaluate the qualified sampling and testing personnel and the testing equipment. The program shall cover sampling procedures, testing procedures, and testing equipment. Each IA program shall include a schedule of frequency for IA evaluation. The schedule may be established based on either a project basis or a system basis. The frequency can be based on either a unit of production or on a unit of time.

(i) The testing equipment shall be evaluated by using one or more of the following: Calibration checks, split samples, or proficiency samples.