

§ 636.106

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,”¹ 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.

¹Information 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.

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§ 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