

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-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.

**§ 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.

<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.