

**Subpart E—Discussions, Proposal Revisions and Source Selection**

- 636.501 What issues may be addressed in discussions?
- 636.502 Why should I use discussions?
- 636.503 Must I notify offerors of my intent to use/not use discussions?
- 636.504 If the solicitation indicated my intent was to award contract without discussions, but circumstances change, may I still hold discussions?
- 636.505 Must a contracting agency establish a competitive range if it intends to have discussions with offerors?
- 636.506 What issues must be covered in discussions?
- 636.507 What subjects are prohibited in discussions, communications and clarifications with offerors?
- 636.508 Can price or cost be an issue in discussions?
- 636.509 Can offerors revise their proposals as a result of discussions?
- 636.510 Can the competitive range be further defined once discussions have begun?
- 636.511 Can there be more than one round of discussions?
- 636.512 What is the basis for the source selection decision?
- 636.513 Are limited negotiations allowed prior to contract execution?
- 636.514 How may I provide notifications and debriefings?

AUTHORITY: Sec. 1503 of Pub. L. 109-59, 119 Stat. 1144; Sec. 1307 of Pub. L. 105-178, 112 Stat. 107; 23 U.S.C. 101, 109, 112, 113, 114, 115, 119, 128, and 315; 49 CFR 1.48(b).

SOURCE: 67 FR 75926, Dec. 10, 2002, unless otherwise noted.

**Subpart A—General****§ 636.101 What does this part do?**

This part describes the FHWA's policies and procedures for approving design-build projects financed under title 23, United States Code (U.S.C.). This part satisfies the requirement of section 1307(c) of the Transportation Equity Act for the 21st Century (TEA-21), enacted on June 9, 1998. The contracting procedures of this part apply to all design-build project funded under title 23, U.S.C.

**§ 636.102 Does this part apply to me?**

(a) This part uses a plain language format to make the rule easier for the general public and business community to use. The section headings and text,

often in the form of questions and answers, must be read together.

(b) Unless otherwise noted, the pronoun "you" means the primary recipient of Federal-aid highway funds, the State Transportation Department (STD). Where the STD has an agreement with a local public agency (or other governmental agency) to administer a Federal-aid design-build project, the term "you" will also apply to that contracting agency.

**§ 636.103 What are the definitions of terms used in this part?**

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. Also, the following definitions are used:

*Adjusted low bid* means a form of best value selection in which qualitative aspects are scored on a 0 to 100 scale expressed as a decimal; price is then divided by qualitative score to yield an "adjusted bid" or "price per quality point." Award is made to offeror with the lowest adjusted bid.

*Best value selection* means any selection process in which proposals contain both price and qualitative components and award is based upon a combination of price and qualitative considerations.

*Clarifications* means a written or oral exchange of information which takes place after the receipt of proposals when award without discussions is contemplated. The purpose of clarifications is to address minor or clerical revisions in a proposal.

*Communications* are exchanges, between the contracting agency and offerors, after receipt of proposals, which lead to the establishment of the competitive range.

*Competitive acquisition* means an acquisition process which is designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to the selection of the proposal representing the best value to the contracting agency.

*Competitive range* means a list of the most highly rated proposals based on the initial proposal rankings. It is based on the rating of each proposal against all evaluation criteria.

*Contracting agency* means the public agency awarding and administering a design-build contract. The contracting