power and responsibilities among the various levels of government, and, therefore, will not have Federalism implications.

C. Executive Order 13211, Regulations
that Significantly Affect Energy Supply,
Distribution, or Use

The FAA analyzed this final rule
under Executive Order 13211, Actions
Concerning Regulations that
Significantly Affect Energy Supply,
Distribution, or Use (May 18, 2001). The
agency has determined that it will not
be a “significant energy action” under
the executive order and will not be
likely to have a significant adverse effect
on the supply, distribution, or use of
energy.

VI. How To Obtain Additional
Information

A. Rulemaking Documents

An electronic copy of a rulemaking
document may be obtained by using the
Internet—
1. Search the Federal eRulemaking
Portal (http://www.regulations.gov);
2. Visit the FAA’s Regulations and
Policies Web page at http://
www.faa.gov/regulations_policies or
3. Access the Government Printing
Office’s Web page at http://
www.gpo.gov/fdsys/

Copies may also be obtained by
sending a request (identified by notice,
amendment, or docket number of this
rulemaking) to the Federal Aviation
Administration, Office of Rulemaking,
ARM–1, 800 Independence Avenue
SW., Washington, DC 20591, or by
calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by
going to http://www.regulations.gov and
following the online instructions to
search the docket number for this
action. Anyone is able to search the
electronic form of all comments
received into any of the FAA’s dockets
by the name of the individual
submitting the comment (or signing the
comment, if submitted on behalf of an
association, business, labor union, etc.).

C. Small Business Regulatory
Enforcement Fairness Act

The Small Business Regulatory
Enforcement Fairness Act (SBREFA) of
1996 requires FAA to comply with
small entity requests for information or
advice about compliance with statutes
and regulations within its jurisdiction.
A small entity with questions regarding
this document, may contact its local
FAA official, or the person listed under
the FOR FURTHER INFORMATION CONTACT
heading at the beginning of the

List of Subjects in 14 CFR Part 121
Air carriers, Aircraft, Airmen,
Aviation safety, Safety, Transportation.

The Amendment
In consideration of the foregoing, the
Federal Aviation Administration
amends chapter I of title 14, Code of
Federal Regulations as follows:

PART 121—OPERATING
REQUIREMENTS: DOMESTIC, FLAG,
AND SUPPLEMENTAL OPERATIONS

§ 121.542 Flight crewmember duties.

(d) During all flight time as defined in
14 CFR 1.1, no flight crewmember may
use, nor may any pilot in command
permit the use of, a personal wireless
communications device (as defined in
49 U.S.C. 44732(d)) or laptop computer
while at a flight crewmember duty
station unless the purpose is directly
related to operation of the aircraft, or for
emergency, safety-related, or
employment-related communications,
in accordance with air carrier
procedures approved by the
Administrator.

Issued under the authority provided by 49
U.S.C. 106(f), 47011(a) and 44732 in
Washington, DC on January 22, 2014.

Michael P. Huerta,
Administrator.

[BFR Doc. 2014–02991 Filed 2–11–14; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
23 CFR Part 636
[FHWA Docket No. FHWA–2013–0043]
RIN 2125–AF58
Design-Build Contracting
AGENCY: Federal Highway
Administration (FHWA), Department of
Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FHWA is revising its
regulations related to the use of
alternative technical concepts (ATC) in
design-build project delivery of highway
construction. This final rule eliminates
the requirement to submit a base
proposal when a contracting agency
allows design-build proposers to submit
ATCs in their technical and price
proposals.

DATES: Effective March 14, 2014.

FOR FURTHER INFORMATION CONTACT:
For technical information: Mr. Gerald
Yakovenko, FHWA Office of Program
Administration, Federal Highway
Administration, 1200 New Jersey
Avenue SE., Washington, DC 20590,
202–366–1562, gerald.yakovenko@
dot.gov. For legal information: Ms. Janet
Myers, Office of the Chief Counsel, 202–
366–2019, Federal Highway
Administration, 1200 New Jersey
Avenue SE., Washington, DC 20590.
Office hours are from 8:00 a.m. to 4:30
p.m., e.t., Monday through Friday,
except Federal holidays.

SUPPLEMENTARY INFORMATION:
Electronic Access

This document and all comments
received may be viewed online through
the Federal eRulemaking portal at:
http://www.regulations.gov. The Web
site is available 24 hours each day, 365
days each year. Electronic submission
and retrieval help and guidelines are
available under the help section of the
Web site. An electronic copy of this
document may also be downloaded by
accessing the Office of the Federal
Register’s home page, http://
www.federalregister.gov, or the
Government Printing Office’s Federal
fdsys.

Background

The FHWA’s current regulatory policy
in part 636 allows contracting agencies
to use ATCs in their procurement
process subject to two conditions: (1)
the ATC must not conflict with the
criteria agreed upon in the
environmental decisionmaking process,
and (2) the contracting agency must
require proposers to submit a base
proposal in addition to supplemental
ATC-based proposals. Specifically, 23
CFR 636.209(b) states: “At your
discretion, you may allow proposers to
submit alternate technical concepts in
their proposals as long as these alternate
criteria 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 Request for Proposal requirements.”

Thus, the current policy allows proposers to submit proposals based on an approved ATC, but not as a substitute for the base proposal.

The requirement for a base proposal and a supplemental ATC-based proposal was founded on the perception that it would allow for a fair comparison of proposals. When FHWA released the final rule implementing design-build contracting on December 10, 2002, the Agency believed that the requirement would provide contracting agencies with information on quality and price for comparison. In addition, contracting agencies could evaluate ATC-based proposals from firms desiring to submit innovative concepts. The underlying principle in the existing policy is to ensure fairness and open competition by making certain that all proposers are competing for the same project.

**Notice of Proposed Rulemaking (NPRM)**

The FHWA published an NPRM on August 1, 2013 (78 FR 46546), proposing to eliminate the base proposal requirement when a contracting agency allows design-build proposers to submit ATCs in their technical and price proposals. All comments received in response to the NPRM have been considered in adopting this final rule. Comments were received from 10 entities. The commenters include: four State departments of transportation (State DOTs), one local public agency, and five industry associations.

**Analysis of NPRM Comments and FHWA Response**

The following discussion summarizes the major comments submitted to the docket on the NPRM, notes where and why changes have been made to the rule, and states why particular recommendations or suggestions have not been incorporated into the final rule.

**General Discussion of Comments**

In general, most of the commenters expressed support for the revisions and concurred that a fair and transparent procurement process can be achieved as long as the request for proposal (RFP) document clearly describes the contracting agency’s requirements for ATC content, submission, and review; procedures for confidential meeting; and methods for evaluating the ATC in the proposal review process. None of the commenters disagreed with ending the base proposal requirement when a contracting agency allows design-build proposers to submit ATCs in the technical and price proposals. However, a few commenters raised issues concerning confidentiality and the implementation of design-build contracting.

Several of the contracting agencies noted the benefits of using ATCs in design-build project delivery and concurred that the requirement to prepare base proposals is not cost effective. In particular, the Orange County Transportation Authority (OCTA) noted that “ATCs have been proven to provide numerous benefits including the increased efficiency, the reduction of project risks, and the acceleration of project delivery. Requiring proposers to prepare and submit multiple proposals requires the expenditure of additional funds and man hours that discourages proposers from developing ATCs. OCTA believes that by removing this requirement, design-build proposers will instead be encouraged to explore and develop ATCs and include them in their design-build proposals.”

**Comments on the Confidentiality Requirement**

Several commenters expressed differing viewpoints regarding confidentiality issues in the ATC submission and review process. While the Design-Build Institute of America (DBIA) agreed with the proposed deletion of the base submission requirement, they expressed concerns regarding the exception to confidentiality in proposed section 636.209(b)(2). Specifically, DBIA stated that “confidentiality is essential to the success of the ATC process and there should not be any exceptions to maintaining that confidentiality. DBIA believes that breaking confidentiality impedes design-builders from distinguishing the benefits of their ATC proposal from other proposals. Not only does breaking confidentiality discourage design-builders from submitting ATCs; it may have the opposite effect. In the example given in the proposed rule, a design-builder concerned about an addendum may choose to not bring forth an alternative to avoid a 4(f) property. The owner never learns of this and the 4(f) is not avoided, thus depriving the owner of the benefits of ATCs.” Similarly, the American Road and Transportation Builders Association believed that contracting agencies have two primary responsibilities in administering an ATC process: “1. Any willingness or acknowledgement for changing the project scope of work or requiring the proposer to include in the RFP must be conveyed to all design-build teams so that no single team attains an unfair advantage. 2. Strict confidentiality must be maintained relative to intellectual property and ideas presented by each design-build team during the ATC process.”

On the other hand, two of the contracting agencies agreed with the proposed language regarding confidentiality. The Washington State DOT noted that confidentiality is “essential for encouraging use of ATCs,” but “[t]here are circumstances under which the agency would be compelled, in the interest of fairness, to reveal certain basic configuration changes to other proposers as a result of the inquiries associated with or consequent to a proposed ATC.” In addition, New York DOT commented that experience “with a proposed ATC avoiding 4(f) impacts and right-of-way acquisition” demonstrated the need for the exceptions to the confidentiality requirement.

The FHWA shares the DBIA’s belief that confidentiality is important, but also agrees with the contracting agency representatives regarding the necessity for the exception to confidentiality. It is important that contracting agencies provide a transparent and level playing field for all proposers. When a contracting agency makes a determination that there is no feasible and prudent alternative that avoids the use of Section 4(f) property, that agency is making a statement regarding the basic configuration for the project. If it later becomes apparent that there is a prudent and feasible approach to avoid the taking of Section 4(f) property, then, in the interest of fairness, it is incumbent upon the contracting agency to amend the RFP basic configuration/design criteria and inform all proposers of a modification. The FHWA revised the language in the final rule to indicate that when disclosure is necessary, the contracting agency must revise the RFP documents by releasing the minimal amount of information necessary to: (1) ensure compliance with Federal or State permitting and other legal requirements; and (2) ensure that all proposers are aware of the revised RFP requirements.

**Comments on an “Equal or Better” Requirement**

The Washington State DOT was concerned that the proposed regulatory language did not include an “equal or better” provision that is present in many State DOT ATC contract provisions. The Washington State DOT believed that this omission might “open the door to scope reductions disguised as ATCs and under the ‘level playing field’ concept that FHWA has worked so hard to establish and maintain.” The FHWA
shares the State’s concern that this omission might result in undesirable scope reductions. The “Background” section of the August 1, 2013, NPRM noted that ATCs are based on the concept of “equal or better” solutions. However, the FHWA is reluctant to provide a regulatory definition for an ATC. Many State DOTs currently have their own definitions in contract language. Instead of defining ATC, we are including the “equal or better” requirement in the revised 23 CFR 636.209(b)(1).

Comments on Evaluation Factors

The Council on Federal Procurement of Architectural and Engineering Services (COFPAES) did not comment directly on the proposed revision to Section 636.209, but provided a general comment on FHWA’s design-build policy in part 636. The COFPAES urged that two-phase design-build contracts under 23 U.S.C. 112(b)(3) and 41 U.S.C. 3309 should comply with the requirements of the Brooks Act (40 U.S.C. 1101, et seq.) such that in phase one of a design-build process, “cost related or price-related evaluation factors are not permitted.” The FHWA notes that COFPAES submitted a similar comment in response to the FHWA’s October 19, 2001, NPRM for design-build contracting (66 FR 53288). In the preamble to the December 10, 2002, final rule implementing design-build contracting (67 FR 75962), the FHWA stated: “Design-build contracts are not contracts strictly for the procurement of architectural or engineering services and, therefore, they are not subject to the requirement to use qualifications-based selection procedures. In many design-build contracts, the engineering or architectural services comprise a relatively small percent of the total contract amount. The FHWA recognizes the importance of architectural and engineering services in reducing the life-cycle cost of projects. However, design-build contracts are not architectural and engineering contracts and the provisions of 23 U.S.C. 112(b)(2) do not apply to design-build contracts.”

Additional Changes From the Proposed Rule

The FHWA is substituting the term “alternative technical concept,” in the final rule, for “alternate technical concept,” in the proposed rule, because the word “alternative” is more appropriate for the ATC process used by many contracting agencies where proposers are allowed to submit multiple technical concepts for the same project. Although there are some instances of the use of the word “alternate,” most contracting agencies use “alternative” in their ATC process. Therefore, the FHWA is using “alternative” in the final rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action will not be a significant regulatory action within the meaning of Executive Order 12866, or within the meaning of DOT’s regulatory policies and procedures.

The economic impact of this rulemaking will be minimal and not adversely affect, in a material way, any sector of the economy. This rulemaking merely revises the FHWA’s policies concerning the design-build contracting technique. The rule will not affect the total Federal funding available to the State DOTs under the Federal-aid highway program. Therefore, an increased use of design-build delivery method will not yield significant economic impacts to the Federal-aid highway program. Additionally, this rule will not interfere with any action taken or planned by another agency and not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), FHWA has evaluated the effects of this action and has determined that the action will not have a significant economic impact on a substantial number of small entities. The rule provides procedures for use of ATCs in design-build project delivery of highway construction. As such, it primarily affects States, which are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, States do not meet the definition of a small entity and the RFA does not apply. The FHWA further certifies that the proposed action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (UMRA). Section 202 of the UMRA (2 U.S.C. 1531–1538) requires Federal agencies to prepare a written assessment of proposed Federal mandates likely to result in the expenditure by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. This rule will not result in the expenditure by State, local, or tribal governments, or by the private sector, of more than $100 million annually.

Executive Order 13132 (Federalism)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The FHWA has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132 and determined that it will not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The FHWA has also determined that this action will not preempt any State law or regulation or affect the States’ ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. The FHWA did not receive any comments on the intergovernmental review analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et seq.), the FHWA must obtain approval from the Office of Management and Budget for each collection of information we conduct, sponsor, or require through regulations. The FHWA has determined that this rule does not contain a collection of information requirement for purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), and determined that it will not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20). However, Federal-aid highway projects on which design-build is used must still comply with the NEPA, as amended.
by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this rule does not raise any environmental justice issues.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 636**

Construction, Construction manager, General contractor, Grant programs, Transportation, Highways, and Roads.

Issued on: January 31, 2014.

Gregory G. Nadeau,
Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, FHWA amends title 23, Code of Federal Regulations, part 636 as follows:

**PART 636—DESIGN-BUILD CONTRACTING**

1. The authority citation for part 636 continues to read as follows:


2. Amend §636.209 by revising paragraph (b) to read as follows:

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

<table>
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| (b)(1) At your discretion, you may allow proposers to submit alternative technical concepts (ATCs) in their proposals if:

(i) The ATCs:

(A) Provide an equal or better solution; and

(B) Do not conflict with criteria agreed upon in the environmental decisionmaking process; and

(ii) The RFP document clearly describes your:

(A) Requirements for ATC content, submission, and review;

(B) Procedures for confidential meetings (if used); and

(C) Methods for evaluating ATCs in the proposal review process;

(2) You must maintain the confidentiality of ATCs, except to the extent that disclosure is necessary to maintain compliance with Federal or State permitting and other legal requirements necessary for the delivery of the project. When disclosure is necessary, you must revise the RFP documents by releasing the minimal amount of information necessary to ensure:

(i) Compliance with Federal or State permitting and other legal requirements; and

(ii) All proposers are aware of the revised RFP requirements.

[FR Doc. 2014–03034 Filed 2–11–14; 8:45 am]

BILLING CODE 4910–22–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG–2013–0562]

**RIN 1625–AA09**

**Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is modifying the operating schedules that govern the US 90 (Danzinger) Bridge across the Inner Harbor Navigational Canal (IHNC), mile 3.1 and the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) bridge across the IHNC, mile 4.6, both at New Orleans, LA. This change allows for the safe navigation of vessels while reflecting the low volume of vessel traffic through the bridges thereby increasing efficiency of operations. The changes allow the bridges to operate in a manner that aligns the two operating schedules so the bridge owner will be able to use the same bridge crew personnel to operate both bridges with little to no effect on navigation through the bridges.

**DATES:** This rule is effective March 14, 2014.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0562. To view documents mentioned in this preamble as being available in the docket, go to http://www.regulations.gov, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the