Subpart 36.3 - Two-Phase Design-Build Selection Procedures

Parent topic: Part 36 - Construction and Architect-Engineer Contracts

36.300 Scope of subpart.

This subpart prescribes policies and procedures for the use of the two-phase design-build selection procedures authorized by 10 U.S.C. 3241 and 41 U.S.C. 3309.

36.301 Use of two-phase design-build selection procedures.

(a) During formal or informal *acquisition planning* (see part 7), if considering the use of two-phase design-build selection procedures, the *contracting officer shall* conduct the evaluation in paragraph (b) of this section.

(b) The two-phase design-build selection procedures *shall* be used when the *contracting officer* determines that this method is appropriate, based on the following:

(1) Three or more *offers* are anticipated.

(2) Design work *must* be performed by *offerors* before developing price or cost proposals, and *offerors* will incur a substantial amount of expense in preparing *offers*.

(3) The following criteria have been considered:

(i) The extent to which the project requirements have been adequately defined.

(ii) The time constraints for delivery of the project.

(iii) The capability and experience of potential contractors.

(iv) The suitability of the project for use of the two-phase selection method.

(v) The capability of the agency to manage the two-phase selection process.

(vi) Other criteria established by the *head of the contracting activity*.

36.302 Scope of work.

The agency *shall* develop, either in-house or by contract, a scope of work that defines the project and states the Government's requirements. The scope of work *may* include criteria and preliminary design, budget parameters, and schedule or delivery requirements. If the agency contracts for development of the scope of work, the procedures in subpart 36.6 *shall* be used.

36.303 Procedures.

One *solicitation may* be issued covering both phases, or two *solicitations may* be issued in sequence. Proposals will be evaluated in Phase One to determine which *offerors* will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.

36.303-1 Phase One.

(a) Phase One of the *solicitation*(s) *shall* include-

(1) The scope of work;

(2) The phase-one evaluation factors, including-

(i) Technical approach (but not detailed design or technical information);

(ii) Technical qualifications, such as-

(A) Specialized experience and technical competence;

(B) Capability to perform;

(C) *Past performance* of the *offeror*'s team (including the architect-engineer and *construction* members); and

(iii) Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One);

(3) Phase-two evaluation factors (see 36.303-2); and

(4) A statement of the maximum number of *offerors* that will be selected to submit phase-two proposals. The maximum number specified in the *solicitation shall* not exceed five unless the *contracting officer* determines, for that particular *solicitation*, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures. The *contracting officer shall* document this determination in the contract file. For *acquisitions* greater than $5.5 million, the determination *shall* be approved by the *head of the contracting activity*, delegable to a level no lower than the senior *contracting* official within the *contracting activity*. In civilian agencies, for paragraph (a)(4) of this section, the senior *contracting* official is the advocate for competition for the *procuring activity*, unless the agency designates a different position in agency procedures. The approval *shall* be documented in the contract file.

(b) After evaluating phase-one proposals, the *contracting officer shall* select the most highly qualified *offerors* (not to exceed the maximum number specified in the *solicitation* in accordance with 36.303-1(a)(4)) and request that only those *offerors* submit phase-two proposals.

36.303-2 Phase Two.

(a) Phase Two of the *solicitation*(s) *shall* be prepared in accordance with part 15, and include phase-

two evaluation factors, developed in accordance with 15.304. Examples of potential phase-two technical evaluation factors include design concepts, management approach, key personnel, and proposed technical solutions.

(b) Phase Two of the *solicitation*(s) *shall* require submission of technical and price proposals, which *shall* be evaluated separately, in accordance with part 15.