

Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 223—OTHER PROVISIONS RELATING TO PLANNING AND SOLICITATION GENERALLY

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PRIOR PROVISIONS

A prior chapter 223 “PLANNING AND SOLICITATION RELATING TO PARTICULAR ITEMS OR SERVICES”, as added by Pub. L. 115-232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1827, and consisting of reserved section 3251, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1811(b), Jan. 1, 2021, 134 Stat. 4164.

§ 3241. Design-build selection procedures

(a) **AUTHORIZATION.**—Unless the traditional acquisition approach of design-bid-build established under chapter 11 of title 40 is used or another acquisition procedure authorized by law is used, the head of an agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

(b) **CRITERIA FOR USE.**—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when—

- (1) the contracting officer anticipates that three or more offers will be received for such contract;
- (2) design work must be performed before an offeror can develop a price or cost proposal for such contract;
- (3) the offeror will incur a substantial amount of expense in preparing the offer; and
- (4) the contracting officer has considered information such as the following:
 - (A) The extent to which the project requirements have been adequately defined.
 - (B) The time constraints for delivery of the project.
 - (C) The capability and experience of potential contractors.
 - (D) The suitability of the project for use of the two-phase selection procedures.
 - (E) The capability of the agency to manage the two-phase selection process.
 - (F) Other criteria established by the agency.

(c) **PROCEDURES DESCRIBED.**—Two-phase selection procedures consist of the following:

¹ So in original. There is no section 3248.

(1) **DEVELOPMENT OF SCOPE OF WORK STATEMENT.**—The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government’s requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government’s needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with chapter 11 of title 40.

(2) **SOLICITATION OF PHASE-ONE PROPOSALS.**—The contracting officer solicits phase-one proposals that—

- (A) include information on the offeror’s—
 - (i) technical approach; and
 - (ii) technical qualifications; and
- (B) do not include—
 - (i) detailed design information; or
 - (ii) cost or price information.

(3) **EVALUATION FACTORS.**—

(A) **EVALUATION FACTORS TO BE USED.**—The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include—

- (i) specialized experience and technical competence;
- (ii) capability to perform;
- (iii) past performance of the offeror’s team (including the architect-engineer and construction members of the team); and
- (iv) other appropriate factors, except that cost-related or price-related evaluation factors are not permitted.

(B) **RELATIVE IMPORTANCE OF EVALUATION FACTORS AND SUBFACTORS.**—Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals.

(C) **EVALUATION OF PROPOSALS.**—The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

(4) **SELECTION BY CONTRACTING OFFICER.**—

(A) **NUMBER OF OFFERORS SELECTED AND WHAT IS TO BE EVALUATED.**—The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

- (i) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and
- (ii) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with subsections (b), (c), and (d) of section 3206 of this title.