

§ 1726.253 Prior approved contract modification related to alternative bid provision for payment to contractor for bulk purchase of materials.

When construction is to be performed over an extended period of time, but large quantities of material are to be purchased by the contractor at the beginning of the project (e.g., cable for URD installations), the borrower may allow alternative bids providing for payment to the contractor of 90 percent of the cost of such materials within 30 days of delivery of those materials at the job site. The borrower will retain the right to award the contract with or without the alternative payment provision, however, the contract still must be awarded on the basis of the lowest evaluated responsive bid for the alternative accepted.

§ 1726.254 Prior approved contract modifications related to RUS approval of contracts and amendments and modified bidding requirements.

It will be necessary for borrowers to make certain modifications to various RUS contract forms to implement the provisions of this part. If a RUS approved form of contract is required to be used by this part and private bid opening is permitted by this part, the "Notice and Instructions to Bidders" of the contract form may be modified accordingly. Other modifications are needed to indicate that certain provisions related to RUS approval are not applicable under specified circumstances. These modifications are as follows:

(a) *RUS Form 173 Materials Contract*. No modifications.

(b) *RUS Form 180 Construction Contract Amendment*. No modifications.

(c) *RUS Form 198 Equipment Contract*. For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) Change Section 5(e) of the "Equipment Contract" to read as follows:

"(e) Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto provided, however, the Seller shall not assign this contract

or any part hereof without approval in writing of the Purchaser, and further the Seller shall not enter into any contract with any person, firm or corporation for the performance of the Seller's obligations hereunder, or any part thereof, without the approval in writing of the Purchaser."

(2) Delete Section 5(f) of the "Equipment Contract."

(d) *RUS Form 200 Construction Contract—Generating*. For contracts Not requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Contractor's Proposal, Article II, Section 3(a), Sentence 2*. Delete the words "and the Administrator."

(2) *Contractor's Proposal, Article II, Section 3(d), Sentence 2*. Delete the words "and approved by the Administrator¹" and the associated footnote.

(3) *Contractor's Proposal, Article VI, Section 7*. Change to read as follows:

"Nonassignment of Contract. Except as provided in Section 8 of this Article, the Bidder will not assign this Contract, or any interest in any funds that may become due hereunder, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof without the approval in writing of the Owner and the Surety or Sureties, if any."

(4) *Contractor's Proposal, Article VI*. Delete Section 10.

(5) *Acceptance*. Delete the words "Subject to the approval of the Administrator."

(e) *RUS Form 201 Right-of-Way Clearing Contract*. No modifications.

(f) *RUS Form 203 Transmission System Right-of-Way Clearing Contract*. For contracts Not requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Notice and Instructions to Bidders, Section 8*. Delete the words "and such acceptance has been approved by the Administrator."

(2) *Contractor's Proposal, Article II, Section 1(a)*. Replace the word "Administrator" with the word "Owner" in two places in the referenced section.

(3) *Contractor's Proposal, Article II, Section 3(d), Sentence 1*. Delete the words "and with the approval of the Administrator¹" and the associated footnote.