

set forth in the FAR subpart 9.5 (48 CFR part 9, subpart 9.5); however, the identification of the existence of an organizational conflict of interest may be made by either the Administrator or the cognizant Contracting Officer. In the event an organizational conflict of interest is determined to exist, the cognizant Contracting Officer shall take the actions prescribed at FAR 9.504 (48 CFR 9.504) to attempt to avoid, neutralize or mitigate the conflict. Should these actions be deemed by the Administrator and the Contracting Officer to adequately resolve the conflict, the contracting action with the offeror/contractor may proceed. Should the Administrator or the Contracting Officer determine that an organizational conflict of interest still exists such that contract award or other contracting action cannot be taken (award of task/delivery order, etc.) the offeror/contractor shall be so informed by the Contracting Officer and be provided a reasonable opportunity to respond in accordance with FAR 9.504(e) (48 CFR 9.504(e)). After considering the contractor's response, if it is found by both the Administrator and Contracting Officer to remedy the conflict of interest, the contracting action may proceed. If the Administrator and Contracting Officer determine that the contractor's response does not resolve the conflict of interest, yet continuing with the contracting action with the offeror/contractor in question is considered in the best interest of the United States, a waiver in accordance with FAR 9.503 (48 CFR 9.503) may be executed. This waiver shall be submitted under the Contracting Officer's signature and approved by the Administrator. The Administrator has been delegated Head of Contracting Activity authority by the USDA Senior Procurement Executive solely for the purpose of waiver approval.

§ 1789.162 Indemnification agreement.

As a condition of approving Borrower funding, the government will require the Borrower to enter into an Indemnification Agreement, in form and substance satisfactory to RUS, providing that the Borrower will indemnify and hold harmless the government and any officers, agents or employees of the

government from any and all liability, including costs, fees, and settlements arising out of, or in any way connected with the payment of the Consultant's fee pursuant to the Consultant Contract. The Indemnification Agreement may recognize, as a condition of liability thereunder, the rights of the borrower to prompt notice, to use of counsel of its own choosing, and to participation in any settlement of a claim against which indemnification is sought.

§ 1789.163 Waiver.

RUS may waive any requirement or procedure of this subpart by determining that its application in a particular situation would not be in the government's interest, except that certain provision that the subject contracts are subject to the provisions of the FAR (48 CFR ch. 1) and AGAR (48 CFR ch. 4).

§§ 1789.164—1789.165 [Reserved]

Subpart B—Escrow Account Funding and Payments

§ 1789.166 Terms and conditions of funding agreement.

Funding Agreements between the Borrower and a Consultant shall be in form and substance satisfactory to RUS and provide for, among other matters, the following:

- (a) Specific reference by number to the applicable Consulting Contract entered into between the government and the Consultant;
- (b) Specific reference by number to the applicable Task Order (where applicable);
- (c) A brief description of the Application;
- (d) A requirement that Invoices make specific reference to:
 - (1) The applicable contract and Task Order(s); and
 - (2) The Escrow Account from which payment is to be made;
- (e) A requirement that the Final Invoice for a Task Order be clearly identified as such;
- (f) A description of the services to be provided by the Consultant to RUS and the applicable time frames for the provision of such services;