

**§ 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 as-

signs 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 Administrator<sup>1</sup>" 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

Administrator<sup>1</sup>” and the associated footnote.

(4) *Contractor’s Proposal, Article II, Section 3(d), Sentence 3.* Delete the words “and approved by the Administrator<sup>2</sup>” and the associated footnote.

(5) *Contractor’s Proposal, Article III, Section 1.* Delete the words “and the Administrator” in five places in the referenced section.

(6) *Contractor’s Proposal, Article III, Section 1(b).* Replace the word “Administrator” with the word “Owner.”

(7) *Contractor’s Proposal, Article III, Section 1(e).* Replace the word “Administrator” with the word “Owner.”

(8) *Contractor’s Proposal, Article VI, Section 1(d).* Delete the words “and the Administrator.”

(9) *Contractor’s Proposal, Article VI.* Delete Section 10.

(10) *Acceptance.* Delete the words “Subject to the approval of the Administrator.”

(g) *RUS Form 238 Construction or Equipment Contract Amendment.* If the contract amendment does not require RUS approval, in accordance with §1726.24(b), the borrower may delete from RUS Form 238 the following sentence:

“(The Administrator of RUS is hereby authorized to approve this amendment either in whole or in part and to delete such items as do not meet his approval.)”

(h) *RUS Form 257 Contract to Construct Buildings.* No modifications.

(i) *RUS Form 282 Subcontracts.* The applicable modifications are as follows:

(1) *Section 6, line 3.* Delete the words “and the Administrator of the Rural Utilities Service (hereinafter called the Administrator).”

(2) *Section 7, line 2.* Change Section 7, line 2 to read as follows:

“approved in writing by the Owner and the Surety, if any; provided, \* \* \*”

(3) *Section 7, line 3.* Delete the words “and the Administrator.”

(j) *RUS Form 764 Substation and Switching Station Erection 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 10.* 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 1.d, Sentence 1.* Delete the words “and with the approval of the Administrator<sup>1</sup>” and the associated footnote.

(4) *Contractor’s Proposal, Article II, Section 1.d, Sentence 2.* Delete the words “and approved by the Administrator<sup>2</sup>” and the associated footnote.

(5) *Contractor’s Proposal, Article III, Section 1.* Delete the words “and the Administrator” in five places in the referenced section.

(6) *Contractor’s Proposal, Article III, Section 1.b.* Replace the word “Administrator” with the word “Owner.”

(7) *Contractor’s Proposal, Article III, Section 1.e.* Replace the word “Administrator” with the word “Owner.”

(8) *Contractor’s Proposal, Article VI, Section 1.e.* Delete the words “and the Administrator.”

(9) *Contractor’s Proposal, Article VI.* Delete Section 10.

(10) *Acceptance.* Delete the words “Subject to the approval of the Administrator.”

(k) *RUS Form 786 Electric System Communications and Control Equipment Contract (including installation).* 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) *Article I, Section 2.* Delete the words “subject to the approval of the Administrator<sup>1</sup>” and “and approved by the Administrator<sup>2</sup>” and the associated footnotes.

(2) *Article II, Section 1, Sentence 2.* Replace the word “Administrator” with “Purchaser.”

(3) *Article II, Section 5.* Delete the words “subject to the approval of the Administrator<sup>3</sup>” and “subject to the approval of the Administrator<sup>4</sup>” and the associated footnotes.

(4) *Article III, Section 2, Sentence 3.* Replace the words “if the Administrator shall so approve” with the words “if the Purchaser shall so approve.”

(5) *Article VI.* Delete Section 7.

(6) *Acceptance*. Delete the words “Subject to the approval of the Administrator.”

(l) *RUS Form 790 Distribution Line Extension Construction Contract (Labor and Materials)*. No modifications.

(m) *RUS Form 792 Distribution Line Extension Construction Contract (Labor Only)*. No modifications.

(n) *RUS Form 830 Electric System Construction Contract*. No modifications.

(o) *RUS Form 831 Electric Transmission Construction 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 10*. Delete the words “and such acceptance has been approved by the Administrator.”

(2) *Contractor’s Proposal, Article II, Section 1.d*. Delete the words “with the approval of the Administrator<sup>1</sup>” and “and approved by the Administrator<sup>2</sup>” and the associated footnotes.

(3) *Contractor’s Proposal, Article II, Section 4.a*. Delete the words “and approved by the Administrator<sup>3</sup>” and the associated footnote.

(4) *Contractor’s Proposal, Article III, Section 1.a. Sentence 4*. Delete the words “and the Administrator.”

(5) *Contractor’s Proposal, Article III, Section 1.b*. Replace the word “Administrator” with the word “Owner.”

(6) *Contractor’s Proposal, Article III, Section 1.c*. Delete the words “and the Administrator” in four places in the referenced section.

(7) *Contractor’s Proposal, Article III, Section 1.e*. Replace the word “Administrator” with the word “Owner.”

(8) *Contractor’s Proposal, Article VI, Section 1.e*. Delete the words “and the Administrator.”

(9) *Contractor’s Proposal, Article VI*. Delete Section 11.

(10) *Acceptance*. Delete the words “Subject to the approval of the Administrator.”

**§ 1726.255 Prior approved contract modifications related to indemnification.**

(a) As an alternative to the indemnification provision required in RUS standard construction contract forms in those jurisdictions requiring specific

language concerning the requirement that the indemnitor indemnify the indemnitee for the indemnitee’s own negligence, the borrower may add the words “otherwise this provision shall apply to any alleged negligence or condition caused by the Owner” so that the first paragraph reads as follows:

“i. To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner’s directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney’s fees) for personal loss, injury, or death to persons (including but not limited to Bidder’s employees) and loss, damage to or destruction of Owner’s property or the property of any other person or entity (including but not limited to Bidder’s property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner, otherwise this provision shall apply to any negligence or condition caused by the Owner.”

(b) As an alternative to the indemnification provision required in RUS standard construction contract forms in those jurisdictions that have a legal prohibition against one party indemnifying another for the other’s negligence, the borrower may replace the words “defend, indemnify, and hold harmless” with the words “shall pay on behalf of” so that the first paragraph reads as follows:

“i. To the maximum extent permitted by law, Bidder shall pay on behalf of Owner and Owner’s directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney’s fees) for personal loss, injury, or death to persons (including but not limited to Bidder’s employees) and loss, damage to or destruction of Owner’s property or the property of any other person or entity (including but not limited to Bidder’s property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner, otherwise this provision shall apply to any negligence or condition caused by the Owner.”