

(d) The P&S shall be based on the LD approved by RUS. Section 1753.3 presents the requirements and procedures for obtaining RUS approval for construction that does not conform to the LD approved by RUS.

(e) RUS approval of P&S is required for construction that is estimated to cost over \$500,000 or 25% of the total loan, whichever is less, and for all building construction. P&S for all other construction are exempt from RUS review and approval except that, at the time of contract approval, RUS will examine the plans and specifications for conformity with the loan purposes and to determine that they comply with other requirements of this part.

(f) RUS will approve only contracts that will provide for at least the following requirements.

(1) *Equal employment opportunity provision.* If this provision is not already in the contract, RUS Contract Form 270, Equal Opportunity Addendum, shall be attached and made a part of the contract.

(2) *Liquidated damages provision.* (i) If not covered by the contract, an appropriate liquidated damages provision, in a form prescribed by RUS, shall be included and made a part of the contract

(ii) The liquidated damages must be based upon the borrower's best estimate of the damages it would incur as a result of the contractor's default.

(3) *Insurance and bond requirements.* (i) The insurance provision shall provide coverage as required by 7 CFR 1788.

(ii) A contractor's bond shall be furnished as required by 7 CFR part 1788.

(iii) The borrower is responsible for ensuring that its contractor complies with the insurance and bond requirements.

(4) Telecommunications software license provision. If the borrower is required to enter into a software license agreement in order to use the equipment, the contract must contain the RUS prepared Software License Agreement as an Addendum.

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§ 1753.8 Contract construction procedures.

(a) *Sealed, competitive bidding*—(1) *Bid opening date.* The borrower is responsible for scheduling the bid opening date. If RUS review of P&S is required by §1753.7, the borrower shall wait until approval has been received before setting the date. In setting the date, sufficient time should be allowed for the bidders to examine the project site and prepare their bids. The borrower shall notify GFR of the bid date and invite GFR to attend.

(2) *Invitations to bid.* The borrower is responsible for sending invitations to prospective bidders and taking any other action necessary to procure full, free, and competitive bidding. The borrower should obtain from its engineer a list of prospective bidders and a recommendation indicating which bidders are considered qualified. The minimum number of contractors to be invited to bid on contracts for various types of facilities is set forth in subparts D, E, F, or H.

(3) *Qualifying bidders.* If the notice and instructions to bidders require that bidders show evidence of meeting certain requirements, the borrower shall qualify bidders before issuing P&S to them. Procedures for qualifying bidders are contained in subparts D, E, and F.

(4) *Receipt of bids.* The borrower shall write on the outside envelope of any bid or bid amendment, the date and time the bid was received. Any bid received from an unqualified bidder or after the time specified for opening shall be returned promptly to the bidder unopened.

(5) *Procedure when fewer than three bids are received.* If fewer than three valid bids are received, the borrower shall consult with RUS to determine whether the bids are to be opened or returned unopened. RUS requires that the project be rebid if fewer than three bids are received and RUS determines that one or more other bidders with an express interest in bidding is available and could meet the bid requirements, but was not invited to bid. RUS shall also require rebidding if it is found that qualified bidders were discouraged from bidding by unreasonable bid requirements (such as late notification

to bidders) or if the borrower fails to follow the bid procedure.

(6) *Conduct of bid openings.* The borrower shall conduct bid openings open to the public. The borrower should be able to contact its attorney for immediate consultation.

(7) *Review of bids.* The borrower shall review all bids prior to reading any bid results to determine that:

(i) The bid guarantees are adequate.

(ii) All minor errors or irregularities made through inadvertence are corrected or waived. Failing this, the bid shall be rejected as nonresponsive.

(iii) In the event of non-minor errors or irregularities, the bid is rejected and the bid price not disclosed.

(8) *Reading of bids.* Bid prices shall not be read until the borrower has reviewed all bids to determine if there are any minor errors or irregularities that may affect the recommendation as to award. These shall be made public at the same time the bid price is announced.

(9) *Evaluating bids.* The borrower shall consider the same alternates in all bids in determining the low bid.

(10) *Rejection.* The borrower shall reject:

(i) All bids if quoted prices are not acceptable or if the specifications were ambiguous and resulted in bidders having different interpretations of the requirements.

(ii) Any bid that is not responsive, or is incomplete, or submitted by an unqualified bidder, or unbalanced between labor and materials or other respects.

(11) *Award of contract.* (i) The borrower shall obtain from the engineer the determination of the lowest responsive bid, a tabulation of all bids and the engineer's recommendation for award of the contract. Contract award is subject to RUS approval if either the cost of the project is over \$500,000 or the contract is with an organization affiliated with the borrower. Contract award of all other projects is not subject to RUS approval.

(ii) If an award is made, the borrower shall award the contract to the lowest responsive bidder. The borrower may award the contract immediately upon determination of the lowest responsive

bidder if the following conditions are met:

(A) The project is included in an approved loan and adequate funds were budgeted in the loan and are available.

(B) All applicable RUS procedures were followed, including those in the Notice and Instructions to Bid in the standard forms of contract.

(iii) If RUS approval of the award of contract is required under this paragraph (a)(11), the borrower shall send to RUS for consideration of approval of the award:

(A) Two copies of the low bid.

(B) The engineer's recommendation and the tabulation of all bids.

(C) Evidence of acceptance of the low bid by the borrower, such as:

(1) Certified copy of board resolution or

(2) letter or telegram to RUS signed by a properly authorized corporate official.

(iv) If RUS approval of the award of contract is not required under this paragraph (a)(11), the borrower shall keep a file available for inspection by RUS. The file shall be kept for at least two years and shall include:

(A) One copy of all received bids.

(B) The engineer's recommendation and tabulation of all bids including "Buy American" evaluations, if any, and all other evaluations required by law.

(C) Evidence of acceptance of the low bid by the borrower, such as a copy of the board resolution certified by the Secretary of the board.

(12) *Execution of contract.* (i) The borrower shall submit to RUS three original counterparts of the contract executed by the contractor and borrower.

(ii) If RUS approves the contract, it shall return one copy to the borrower and send one copy to the contractor.

(b) *Negotiated construction contracts.* (1) For the construction of certain facilities the borrower may negotiate a contract rather than solicit sealed competitive bids. Refer to the appropriate subparts E, F, or H for specific requirements and procedures.

(2) For negotiated purchases, borrowers shall use RUS contract forms, standards, and specifications.

(3) For all contract forms except RUS Form 773:

(i) After a satisfactory negotiated proposal has been obtained, the borrower shall submit it to RUS for approval, along with the engineer's recommendation, and evidence of acceptance by the borrower.

(ii) If RUS approves the negotiated proposal, the borrower shall submit three copies of the contract, executed by the contractor and borrower, to RUS for approval.

(iii) If RUS approves the contract, RUS shall return one copy of the contract to the borrower and one copy to the contractor.

(4) For RUS Form 773, the borrower is responsible for negotiating a satisfactory proposal, executing contracts, and closing the contract. See subparts F and I of this part for requirements for major and minor construction, respectively, on Form 773.

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§ 1753.9 Subcontracts.

(a) RUS construction contract Forms 257, 397, 515, and 525 contain provisions for subcontracting. Reference should be made to the individual contracts for the amounts and conditions under which a contractor may subcontract work under the contract.

(b) RUS Form 282, Subcontract, shall be used for subcontracts under construction and installation contracts.

(1) Minor modifications or additions may be made to the subcontract form, as long as they do not change the intent of the primary contract. Any alterations to the subcontract shall be initialed and dated by the persons executing the subcontract.

(2) Subcontracts shall be prepared in quadruplicate and all copies executed by the contractor and subcontractor and consented to by the borrower and surety, if any.

(3) Four executed copies of the subcontract shall be forwarded to RUS for approval. Upon approval, one copy each will be sent to the borrower, contractor, and subcontractor.

(c) As stated in contract Forms 257, 397, 515, and 525, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is

not relieved of any obligations to the borrower and to the Government under the contract.

(d) As stated in the contract, construction shall not be performed by the subcontractor before approval of the subcontract by RUS.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, and amended at 59 FR 43716, Aug. 25, 1994]

§ 1753.10 Preconstruction conference.

The borrower shall conduct a conference, attended by the borrower, contractor, and resident engineer prior to the beginning of construction to provide an opportunity to discuss and agree on responsibilities, procedures, practices, and methods before the work begins. The borrower shall provide each participant with a copy of the conference results. The GFR shall be invited to attend this conference.

§ 1753.11 Contract amendments.

(a) The borrower must obtain RUS approval before execution of any amendment to a contract if

(1) The amendment alters the terms and conditions of the contract or changes the scope of the project covered by the contract regardless of the amount of the contract before amendment,

(2) The amendment increases the amount to be paid under the contract by 20% or more, or

(3) The amendment causes an unbonded contract to require a contractor's performance bond. This would occur when a contract that is executed in an amount below that requiring a performance bond by 7 CFR part 1788, subpart C, is amended to an amount above that amount.

(b) Advance RUS approval to execute other contract amendments is not required. These amendments may be submitted to RUS at any time prior to closeout. If a borrower wishes to receive an advance of funds based on an amended contract amount (i.e., amendments that increase a contract by less than 20%), the borrower may initiate an increase in the amount approved for advance by submitting three copies of the amendment to RUS for approval.

(c) For each amendment executed, the borrower shall make certain that: