

been concurred in by the Agency. The State program official or designee is responsible for concurring in construction contracts with the legal advice and guidance of the OGC when necessary.

**§ 1780.62 Utility purchase contracts.**

Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and concurred in by the Agency. To the extent practical, the Agency review and concurrence of such contracts should take place prior to their execution by the owner. OGC advice and guidance may be requested. Form RD 442-30, "Water Purchase Contract," may be used when appropriate. If the Agency loan will be repaid from system revenues, the contract will be pledged to the Agency as part of the security for the loan. Such contracts will:

- (a) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages.
- (b) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.
- (c) Specify the initial rates and provide a type of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.
- (d) Cover period of time which is at least equal to the repayment period of the loan. State program officials may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

(1) The supplier is subject to regulations of the Federal Energy Regulatory

Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(2) The contract contains adequate provisions for renewal; or

(3) A determination is made that in the event the contract is terminated, there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.

(e) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless the Agency determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(f) Provide for a pledge of the contract to the Agency as part of the security for the loan.

(g) Not contain provisions for:

(1) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(2) Options for the future sale or transfer. This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(h) If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and concurred in provided adequate evidence is furnished to enable the Agency to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and:

(1) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(2) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

## Rural Utilities Service, USDA

## § 1780.70

(3) Concurrence in the proposed contract is obtained from the National Office.

### **§ 1780.63 Sewage treatment and bulk water sales contracts.**

Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to the Agency concurrence. Section 1780.62 should be used as a guide to prepare such contracts.

### **§§ 1780.64–1780.66 [Reserved]**

### **§ 1780.67 Performing construction.**

Owners are encouraged to accomplish construction through contracts with qualified contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by § 1780.76. Inspection services may be provided by individuals as approved by the State staff engineer. Payments for construction will be handled under § 1780.76(e).

### **§ 1780.68 Owner's contractual responsibility.**

This part does not relieve the owner of any responsibilities under its contract. The owner is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, or Federal authority.

### **§ 1780.69 [Reserved]**

### **§ 1780.70 Owner's procurement regulations.**

Owner's procurement requirements must comply with the following standards:

(a) *Code of conduct.* Owners shall maintain a written code or standards of conduct which shall govern the per-

formance of their officers, employees or agents engaged in the award and administration of contracts supported by Agency funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by Agency funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(1) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(2) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(b) *Maximum open and free competition.* All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying materials, the owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency shall consider fully any recommendation made by the owner concerning the technical design and choice of materials to be used for a facility. If the Agency determines that a design or material, other than those that were recommended should be considered by