

§ 1726.204

(h) *Negotiations.* The contracting committee may elect not to hold any negotiations and recommend award of the contract. Otherwise, the contracting committee must give at least each of the three apparent lowest evaluated bidders an equal opportunity to participate in negotiations for the purpose of resolving questions regarding the specification and contract terms and to arrive at a final price. Neither prices of other bids nor relative ranking of any bidder are to be revealed under any circumstances. Such discussions may be held by telephone or similar means provided at least each of the three apparent lowest evaluated bidders have an equal opportunity to participate. Upon completion of the negotiations, the contracting committee will determine the bid that is in the borrower's best interest.

(i) *Award of the contract.* Upon completion of the bid evaluations, the contracting committee will promptly report all findings and recommendations to the borrower's board of directors. The board will either:

- (1) Resolve to award the contract to the selected bidder; or
- (2) Reject all bids.

(j) *Certifications by the contracting committee.* The chairperson of the contracting committee shall certify as follows: "The procedures for multiparty negotiation as described in 7 CFR 1726.203 were followed in awarding this contract." The certification executed by the chairperson of the contracting committee shall be submitted to RUS in writing where required by subpart A of this part.

**§ 1726.204 Multiparty unit price quotations.**

The borrower or its engineer must contact a sufficient number of suppliers or contractors to assure competition and so that at least three bids will be received. On the basis of written unit price quotations, the borrower will select the supplier or contractor based on the lowest evaluated cost.

**§ 1726.205 Multiparty lump sum quotations.**

The borrower or its engineer must contact a sufficient number of suppliers or contractors to assure competi-

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tion and so that at least three bids will be received. On the basis of written lump sum quotations, the borrower will select the supplier or contractor based on the lowest evaluated cost.

**§§ 1726.206-1726.249 [Reserved]**

**Subpart H—Modifications to RUS Standard Contract Forms**

**§ 1726.250 General.**

RUS provides standard forms of contract for the procurement of materials, equipment, and construction and for contract amendments and various related forms for use by RUS borrowers. See §1726.304 for a listing of these forms and how to obtain them. The standard forms of contract shall be used by the borrowers in accordance with the provisions of this part. RUS will give prior approval to certain modifications to these forms without changing the applicable requirements for RUS approval. Such approved modifications are set forth in this subpart. These are the only modifications given prior RUS approval.

[69 FR 7109, Feb. 13, 2004]

**§ 1726.251 Prior approved contract modification related to price escalation on transmission equipment, generation equipment, and generation construction contracts.**

(a) *General.* Where the borrower encounters reluctance among manufacturers, suppliers, and contractors to bid a firm price on transmission equipment or generation equipment, materials or construction, modifications may be made in the RUS standard form of contracts. These modifications, if applicable, may include, as an alternative to the standard form, provisions for adjusting a base price either upward or downward as determined by changes in specified indexes between the time of the bid and the time the work is performed or materials are procured by the contractor for such work. A large number of labor and materials indexes are published monthly by the Bureau of Labor Statistics (BLS). The borrower (acting through its engineer, if applicable) will select the indexes for the particular item to be used in the price adjustment clause. Suppliers'

corporate indexes may not be used. Labor and materials indexes are reported in the BLS's monthly publications entitled "Employment and Earnings" and "Producer Prices and Price Indexes." These publications may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or any of the BLS regional offices.

(b) *Material and equipment contracts.* The approved provisions needed to reflect the modifications to provide for price escalation in the material or equipment contract forms for generation facilities are as follows:

(1) Insert new paragraphs in the Notice and Instructions to Bidders as follows:

"Proposals are invited on the basis of firm prices (or prices with a stated maximum percentage escalation) or on the basis of nonfirm prices to be adjusted as provided for below or on both bases. The owner may award the contract on either basis.

*Nonfirm prices.* The prices are subject to adjustment upward or downward based on change in the Bureau of Labor Statistics labor and material indexes.

A proportion of \_\_\_ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent labor cost and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate \_\_\_ [the borrower will enter the appropriate BLS index] from the month in which the bids are opened to the month in which the labor is incorporated in the equipment or materials. The adjustment for labor costs shall be obtained by applying the percentage of increase or decrease in such index, calculated to the nearest one-tenth of one percent, to the percentage of the contract prices deemed to represent labor costs. A portion of \_\_\_ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent material costs and shall be adjusted based on changes in the Bureau of Labor Statistics, material index \_\_\_ [the borrower will enter the appropriate BLS index] for the period and in a manner similar to the labor cost adjustment."

(2) Insert the following in the contract documents under the "Proposal" section:

"Firm Price \$ \_\_\_\_\_  
Nonfirm Price \$ \_\_\_\_\_"

(3) For equipment that uses a large quantity of insulating oil, the borrower

may insert the following in the contract documents under the "Proposal" section:

"The price for insulating oil shall be adjusted upward or downward based on the change in the Bureau of Labor Statistics Refined Petroleum Rate (057) from the month in which the bids are opened to the month in which the oil is purchased by the equipment supplier. Contracts shall be evaluated based on an estimated cost of \_\_\_ cents per gallon [the borrower will enter the appropriate cost] for oil. Such adjustment, if any, shall not change the contract amount for purpose of applying any other adjustments to the contract prices."

(c) *Construction contracts.* The approved provisions needed to reflect the modifications to provide for price escalation in the construction contract forms for generation facilities are as follows:

(1) Insert new paragraphs in the "Notice and Instructions" to Bidders as follows:

"Proposals are invited on the basis of firm prices (or prices with a stated maximum percentage escalation) or on the basis of nonfirm prices to be adjusted as provided for below or on both bases. The owner may award the contract on either basis.

*Nonfirm Prices*—The prices are subject to adjustment upward or downward based on changes in the Bureau of Labor Statistics labor and material indexes.

A proportion of \_\_\_ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent shop labor costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate \_\_\_ [the borrower will enter the appropriate BLS index] from the month in which bids are opened to the month in which the work is accomplished. The adjustment for shop labor costs shall be obtained by applying the percentage increase or decrease in such index, to the percentage of each partial payment deemed to represent shop labor costs. A portion of \_\_\_ percent [the borrower will enter the appropriate percentage amount] of the contract prices shall be deemed to represent material costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Producer Price Index, \_\_\_ [the borrower will enter the appropriate BLS index] for the period and in a manner similar to the shop labor costs adjustment. A portion of \_\_\_ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent field labor costs and

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shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate \_\_\_\_ [the borrower will enter the appropriate BLS index], for the period and in a manner similar to the shop labor costs adjustment.”

(2) Insert the following in the contract documents under the “Proposal” section:

“Firm Price \$ \_\_\_\_\_  
Nonfirm Price \$ \_\_\_\_\_ ”

§ 1726.252 **Prior approved contract modification related to liability for special and consequential damages.**

This section applies only to transmission equipment purchases and generation contracts. Where the borrower anticipates difficulty in obtaining responsive bids on RUS standard contract forms due to a lack of limitation with respect to special and consequential damages, and where the borrower believes that such a modification will encourage competition through the receipt of an alternative bid which limits the bidder’s liability for special and consequential damages, the borrower may make the following approved phrase modifications in the RUS standard contract form on which the borrower solicits bids:

(a) Insert new paragraphs in the “Notice and Instructions to Bidders” as follows:

“Proposals are invited on the basis of alternative Liability Clause Numbers 1 and 2. The Owner will determine on which Liability Clause basis the award will be made. Any other liability clauses in the proposal or any other modifications will be considered not responsive and unacceptable. These Liability Clauses are defined as follows:

*Liability Clause Number 1.* This will include unmodified all of the standard terms and conditions of the form of contract furnished by the Owner and attached hereto.

*Liability Clause Number 2.* This will include the following paragraph, in addition to all of the standard terms and conditions, otherwise unmodified, of the form of contract furnished by the Owner and attached hereto:

‘Except for the Bidder’s willful delay or refusal to perform the contract in accordance with its terms, the Bidder’s liability to the Owner for special or

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consequential damages on account of breach of this contract shall not exceed in total an amount equal to \_\_\_\_ percent [the borrower will insert an appropriate percentage between 0 and 100 percent, inclusive] of the contract price.’”

(b) Insert the following in the contract documents under the “Proposal” section:

“Price \$(Based on Liability Clause 1) \_\_\_\_\_  
Price \$(Based on Liability Clause 2) \_\_\_\_\_ ”

(c) Insert the following in the acceptance section of the standard contract form:

“This contract is based on Liability Clause Number \_\_\_\_\_.”

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7109, Feb. 13, 2004]

§ 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 [Reserved]

§ 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