

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;
- (g) Agreement that the Borrower shall pay for the Consultant services

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provided to RUS under the applicable contract through an Escrow Account established pursuant to an Escrow Agreement, the Consultant shall not provide services to RUS under the applicable contract unless there are sufficient funds in the Escrow Account to pay for such services, the Consultant shall seek compensation for services provided under the applicable contract from, and only from, funds made available through the Escrow Account, and the Consultant must submit all Invoices to the government for approval.

(h) A form of Escrow Agreement satisfactory to the Borrower, Consultant and the designated Third-party Commercial Institution;

(i) A schedule setting forth when and in what amounts the Borrower shall fund the Escrow Account;

(j) Acknowledgment by the Consultant of the Indemnification Agreement provided by the Borrower to the government; and

(k) The Funding Agreement shall not be effective unless and until approved in writing by RUS.

§ 1789.167 Terms and conditions of escrow agreement.

Escrow Agreements between and among the Borrower, Consultant and Third-party Commercial Institution 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 contract for services;

(b) Specific reference by number to the applicable Task Order;

(c) Specific reference by number to the Escrow Account into which funds are to be deposited;

(d) Invoices to specifically identify the applicable contract and Task Order(s);

(e) Funds to be held in the Escrow Account by the escrow agent until paid to the Consultant pursuant to the government's authorization;

(f) The Escrow Account to be closed and all remaining funds remitted to the Borrower after payment of the Final Invoice, unless otherwise directed by the government;

(g) The government, the Consultant and the Borrower to have the right to be informed, in a timely manner and in

such form as they may reasonably request, as to the status of and activity in the Escrow Account; and

(h) The Escrow Agreement shall not be effective unless and until approved in writing by RUS.

§§ 1789.168–1789.175 [Reserved]

PART 1792—COMPLIANCE WITH OTHER FEDERAL STATUTES, REGULATIONS, AND EXECUTIVE ORDERS

Subparts A–B [Reserved]

Subpart C—Seismic Safety of Federally Assisted New Building Construction

Sec.

1792.101 General.

1792.102 Definitions.

1792.103 Seismic design and construction standards for new buildings.

1792.104 Seismic acknowledgments.

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*; 42 U.S.C. 7701 *et seq.*; E.O. 12699 (3 CFR, 1990 Comp., p. 269).

SOURCE: 58 FR 32437, June 10, 1993, unless otherwise noted.

Subparts A–B [Reserved]

Subpart C—Seismic Safety of Federally Assisted New Building Construction

§ 1792.101 General.

(a) The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*) was enacted to reduce risks to life and property through the establishment and maintenance of an effective earthquake hazards reduction program (the National Earthquake Hazards Reduction Program or NEHRP). The Federal Emergency Management Agency (FEMA) is designated as the agency with the primary responsibilities to plan and coordinate the NEHRP. This program includes the development and implementation of feasible design and construction methods to make structures earthquake resistant. Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR, 1990 Comp., p. 269),