

**§ 1726.252**

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 consequential dam-

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ages 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 apply to any alleged negligence or condition caused by the Owner” so that the first paragraph reads as follows: