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guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(j) *Loan disbursements.* Whenever a loan disbursement is received, lost, or destroyed, the Rural Development Manager will take the appropriate actions outlined in Rural Development Instruction 2018–D.

(k) *Safeguarding bond shipments.* FmHA or its successor agency under Public Law 103–354 personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018–E (available in any FmHA or its successor agency under Public Law 103–354 office), whenever they mail or deliver these items.

(l) *Review of loan closing.* When the loan has been closed, the Rural Development Manager will submit the completed loan closing documents and a statement showing what was done in closing the loan to the State Director. The State Director will review the documents and the Rural Development Manager's statement to determine whether the transaction was closed properly. For loans to public bodies or Indian tribes the State Director will forward all documents, along with a statement that all administrative requirements have been met, to the Regional Attorney. The Regional Attorney will review the submitted material to determine whether all legal requirements have been met. The Regional Attorney should review Rural Development standard forms only for proper execution, unless the State Director brings attention to specific questions. Facility development should not be held up pending receipt of the Regional Attorney opinion. When the review of the State Director has been completed, and for public bodies and Indian tribes the Regional Attorney's opinion has been received, the State Director must advise the Rural Development Manager of any deficiencies that must be corrected and return all material that was submitted for review.

(m) *Loan cancellation.* Loans under this subpart are subject to the provi-

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sions of §1942.12 of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 59 FR 54788, Nov. 2, 1994; 70 FR 19254, Apr. 13, 2005]

§§ 1942.124–1942.125 [Reserved]

§ 1942.126 Planning, bidding, contracting, constructing, procuring.

(a) *General.* This section provides procedures and requirements for planning, bidding, contracting, constructing and procuring facilities financed under this subpart. These procedures do not relieve the owner of contractual obligations that arise from procurement of services.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting and constructing their facilities. Services may be provided by the owner's "in-house" engineer or architect or through contract, subject to FmHA or its successor agency under Public Law 103–354 concurrence. Architects and engineers must be licensed in the State where the facility is to be located.

(1) *Preliminary reports.* A preliminary architectural or engineering report conforming with customary professional standards is required for all construction, except that FmHA or its successor agency under Public Law 103–354 may waive the requirement for a preliminary architectural/engineering report or accept a brief report if the cost of the construction does not exceed \$100,000. Guide 6 to subpart A of this part 1942 (available in any FmHA or its successor agency under Public Law 103–354 office) may be used.

(2) *Final reports.* Detailed final plans and specifications are required for all construction and must receive FmHA or its successor agency under Public Law 103–354 concurrence. When negotiated procurement is used for construction costing not more than \$100,000 the final plans and specifications may be provided by the contractor who submits the successful proposal. The plans and specifications must be prepared by or under the supervision of an architect or engineer who is licensed in the State where the

facility is to be located and should include all materials and work to be provided under the contract. Some work and material may be omitted from the contract provided the owner furnishes detailed cost estimates for whatever is needed to fully complete the facility and will complete the facility in accordance with paragraph (e) of this section and the small purchase procedures set out in §1942.18(k)(1) of subpart A of this part 1942. In such cases, FmHA or its successor agency under Public Law 103-354 may determine that it is not necessary to require the applicant to hire a consulting architect/engineer; however, if a second contract that does not qualify for small purchase procedures is needed to complete the facility, the owner must provide for an architect/engineer to design the entire facility. When the contractor provides the plans and specifications, the contract will be considered a design/build procurement method under §1942.18(1) of subpart A of this part 1942.

(3) *Major equipment.* An architect/engineer is not required for major equipment if FmHA or its successor agency under Public Law 103-354 determines the owner has the ability to develop an adequate request for proposal and evaluate the proposals received or can obtain adequate assistance from other sources, such as State or Federal agencies or trade associations.

(c) *Design policies.* Facilities financed by FmHA or its successor agency under Public Law 103-354 must be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90-480) as implemented by the General Services Administration regulations 41 CFR 101-19.6 and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112) as implemented by 7 CFR parts 15 and 15b.

(d) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents.* When standard construction contract documents available from FmHA or its successor agency under Public Law 103-354 are used, or when the amount of the contract does not exceed \$100,000, it will normally not be necessary for the Regional Attorney to perform a detailed legal review. If construction contract documents used are not in the format of guide forms approved by FmHA or its successor agency under Public Law 103-354, and the contract amount exceeds \$100,000, the Regional Attorney must review the documents before their use.

(2) *Contract review and approval.* The owner's attorney will review executed contract documents, including performance and payment bonds, and certify that they are adequate, legal and binding, and that the persons executing the documents have been authorized to do so. The contract documents, bid bonds, and bid tabulation sheets will be forwarded to FmHA or its successor agency under Public Law 103-354 for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by FmHA or its successor agency under Public Law 103-354. The FmHA or its successor agency under Public Law 103-354 District Director is responsible for approving construction contracts with advice and guidance of the State Director and Regional Attorney when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job) should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as prefabricated buildings. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(e) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized 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 or architect prepares design drawings and specifications and inspection is provided in accordance with paragraph (l)(3) of this section.

(f) *Owner's contractual responsibility.* Loans under this subpart are subject to the provisions of §1942.18(i) of subpart A of this part 1942.

(g) *Owner's procurement regulations.* Loans under this subpart are subject to the provisions of §1942.18(j) of subpart A of this part 1942.

(h) *Procurement methods.* Unless the FmHA or its successor agency under Public Law 103-354 National Office gives prior written approval of another method, procurement must be made by one of the following methods:

(1) Small purchase procedures as provided in §1942.18(k)(1) of subpart A of this part 1942.

(2) Competitive sealed bids as provided in §1942.18(k)(2) of subpart A of this part 1942. Competitive sealed bids is the preferred procurement method of construction projects, except for buildings costing \$100,000 or less when the owner desires to use a "preengineered" or "packaged" building.

(3) Competitive negotiation as provided in §1942.18(k)(3) of subpart A of this part 1942. Competitive negotiation is the preferred procurement method of buildings not exceeding \$100,000 in cost when the owner desires to use a "preengineered" or "packaged" building and for major equipment.

(4) Noncompetitive negotiation as provided in §1942.18(k)(4) of subpart A of this part 1942.

(i) *Contracting methods.* Loans under this subpart are subject to the provisions of §1942.18(1) of subpart A of this part 1942.

(j) *Contracts awarded prior to preapplications.* Loans under this subpart are subject to the provisions of §1942.18(m) of subpart A of this part 1942.

(k) *Construction contract provisions.* Construction contracts for loans under this subpart are subject to the provisions of §1942.18(n) of subpart A of this part 1942. Construction contracts for loans under this subpart are also subject to the provisions of §1901.205 of subpart E of part 1901 of this chapter, regarding nondiscrimination in construction, except that guides 18 and 17 or 19 to subpart A of this part 1942 of this chapter will normally be used instead of Form FmHA or its successor agency under Public Law 103-354 1924-5, "Invitation for Bid (Construction Contract)," and Form FmHA or its successor agency under Public Law 103-354 1924-6, "Construction Contract." When guide 18 is used with a design/build type contract, section 4, "Conflict of Interest," may need revision.

(1) *Construction contract administration.* Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference.* Prior to beginning construction the owner will schedule a preconstruction conference where FmHA or its successor agency under Public Law 103-354 will review the planned development with the owner, its architect or engineer, project inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA or its successor agency under Public Law 103-354 1924-16, "Record of Preconstruction Conference," and the discussions and agreements will be documented. Form FmHA or its successor agency under Public Law 103-354 1924-16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to FmHA or its successor agency under Public Law 103-354 on actual performance during construction for each project financed, or to be financed, in whole or in part with FmHA or its successor agency under Public Law 103-354 funds. The reports are to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The

partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify FmHA or its successor agency under Public Law 103-354 as soon as any of the following conditions are known:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less FmHA or its successor agency under Public Law 103-354 assistance.

(3) *Inspection.* The borrower must provide for inspection of all construction. When the borrower enters into an agreement for technical services with an engineer/architect, the agreement should provide for general engineering/architectural inspection of the construction work. When no such agreement exists, or FmHA or its successor agency under Public Law 103-354 or the borrower determines the inspection services of the engineer/architect may not be sufficient, the owner must provide a project inspector. Prior to the preconstruction conference, the borrower must submit a résumé of qualifications of the project inspector to FmHA or its successor agency under Public Law 103-354 for acceptance in writing. The project inspector will be responsible for making inspections necessary to protect the borrower's interest and for providing written inspection reports to the borrower with copies to the FmHA or its successor agen-

cy under Public Law 103-354 District Director. guide 11 of subpart A of this part 1942 (available in any FmHA or its successor agency under Public Law 103-354 office) may be used as a guide format for inspection reports. For new buildings, additions to existing buildings, and rehabilitation of existing buildings, the project inspector should make inspections at the following stages of construction and at other stages of construction as determined by the District Director and the borrower. Inspections by FmHA or its successor agency under Public Law 103-354 are solely for its benefit as lender.

(i) An initial inspection should be made just prior to or during the placement of concrete footings or monolithic footings and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. If the building design does not include concrete footings the initial inspection should be made just after or during the placement of poles or other foundation materials.

(ii) An inspection should be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing and electrical work is in place and visible, and wall insulation and vapor barriers are installed.

(iii) A final inspection should be made when all development of the structure has been completed and the structure is ready for its intended use.

(4) *Prefinal inspections.* A prefinal inspection will be made by the owner, project inspector, owner's architect or engineer, representatives of other agencies involved, and the District Director. The inspection results will be recorded on Form FmHA or its successor agency under Public Law 103-354 1924-12, "Inspection Report," and a copy provided to all interested parties, including the FmHA or its successor agency under Public Law 103-354 State Director.

(5) *Final inspection.* A final inspection will be made by FmHA or its successor agency under Public Law 103-354 before final payment is made.

(6) *Changes in development plans.* (i) Changes in development plans may be

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approved by FmHA or its successor agency under Public Law 103-354 when requested by owners, provided:

(A) Funds are available to cover any additional costs; and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the facility operation or FmHA or its successor agency under Public Law 103-354's security; and

(D) The change is within the scope of the contract; and

(E) Any applicable requirements of subpart G of part 1940 of this chapter have been met.

(ii) Changes will be recorded on Form FmHA or its successor agency under Public Law 103-354 1924-7, "Contract Change Order," or other similar forms may be used with the prior approval of the District Director. Regardless of the form, change orders must be approved by the FmHA or its successor agency under Public Law 103-354 District Director.

(iii) Changes should be accomplished only after FmHA or its successor agency under Public Law 103-354 approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

(A) Any changes in labor and material and their respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule.

(D) Any increase or decrease in the time to complete the project.

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

§ 1942.127 Project monitoring and fund delivery.

(a) Coordination of funding sources. When a project is jointly financed, the District Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the

project. These responsibilities will include supervision of construction, inspections and determination of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the State Office for advice.

(b) Multiple advances. Loans under this subpart are subject to the provisions of §1942.17 (p)(2) of subpart A of this part 1942.

(c) Use and accountability of funds. Loans under this subpart are subject to the provisions of §1942.17 (p)(3) of subpart A of this part 1942.

(d) Development inspections. Loans under this subpart are subject to the provisions of §1942.17(p)(4) of subpart A of this part 1942.

(e) Payment for project costs. Each payment for project costs must be approved by the borrower's governing body.

(1) Construction. Payment for construction must be for amounts shown on payment estimate forms. Form FmHA or its successor agency under Public Law 103-354 1924-18, "Partial Payment Estimate," may be used for this purpose or other similar forms may be used with the prior approval of the District Director. However, the District Director cannot require more reporting burden than is required by Form FmHA or its successor agency under Public Law 103-354 1924-18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project cost, including construction partial payment estimates, by FmHA or its successor agency under Public Law 103-354 does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(2) Major equipment. Payment for major equipment should generally coincide with delivery of the usable equipment, along with any necessary title or certifications, to the borrower. Borrowers may not use FmHA or its