

§§ 1726.151–1726.174 [Reserved]

Subpart F—General Plant

§ 1726.175 General plant materials.

This section covers items such as office furniture and equipment; transportation equipment and accessories, including mobile radio systems, stores and shop equipment, laboratory equipment, tools and test equipment.

(a) *Contract forms.* The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order.

(b) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for purchase of general plant material and equipment.

(c) *Contract approval.* Contracts for the purchase of general plant items are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

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

§ 1726.176 Communications and control facilities.

This section covers the purchase of microwave and power line carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems. Mobile radio systems are covered as general plant materials in § 1726.175.

(a) *Power line carrier systems.* Power line carrier equipment will frequently be purchased as part of a substation and will be included in the complete substation plans and specifications. When purchased in this manner, the requirements of subpart C of this part, Substation and Transmission Facilities, will apply. If obtained under a contract for only a power line carrier system, the requirements of paragraph (b) of this section apply.

(b) *Load control systems, communications systems, and SCADA systems—(1) Contract forms.* The borrower must use RUS Form 786, Electric System Communication and Control Equipment Contract. This form may be modified to be a “purchase only” contract form.

(2) *Procurement procedures.* (i) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring RUS approval in amounts of up to a cumulative total of \$750,000 or one percent of NUP (not to exceed \$5,000,000), whichever is greater, per calendar year of communications and control facilities construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(ii) The borrower must use multiparty negotiation for all other communications and control facilities contract construction, including all contracts requiring RUS approval. The amount of contracts bid using the multiparty negotiation procedure do not apply to the cumulative total stipulated in paragraph (b)(2)(i) of this section.

(iii) An amendment which increases the scope by adding a project is not considered competitively bid, therefore, the amount of that amendment does apply to the cumulative total stipulated in paragraph (b)(2)(i) of this section.

(3) *Contract approval.* Individual contracts in amounts of \$750,000 or more or one percent of NUP (not to exceed \$1,500,000 for distribution borrowers or \$4,500,000 for power supply borrowers), whichever is greater, exclusive of the cost of owner furnished materials and equipment, are subject to RUS approval.

[60 FR 10155, Feb. 23, 1995, as amended at 77 FR 3072, Jan. 23, 2012]

§§ 1726.177–1726.199 [Reserved]

Subpart G—Procurement Procedures

§ 1726.200 General requirements.

The borrower must use the procedures described in this subpart where such procedures are required under subparts B through F of this part. The borrower must ensure that arrangements prior to announcement of the award of the contract are such that all bidders are treated fairly and no bidder is given an unfair advantage over other bidders.

§ 1726.201 Formal competitive bidding.

Formal competitive bidding is used for distribution, transmission, and headquarters facilities, and may be used for generation facilities. The borrower must use the following procedure for formal competitive bidding:

(a) *Selection of qualified bidders.* The borrower (acting through its engineer, if applicable) will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its QBL for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower (acting through its engineer, if applicable) is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and taking any other action necessary to procure full, free and competitive bidding. The borrower should send out a sufficient number of invitations in order to assure adequate competition and so that at least three bids will be received. Subject to the foregoing criteria, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (e.g., power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will not evaluate a bidder's performance record, safety record, and similar factors when evaluating a bid from a qualified and invited bidder. Such factors are to be considered when determining whether to include a particular bidder on the qualified bidders list.

(d) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(e) *Bid openings.* Bid openings are generally conducted by the engineer in the presence of bidders and a represent-

ative of the borrower and the borrower's attorney. Each bona fide bid must be opened publicly and reviewed for any irregularities, errors, or exceptions. It must be verified that any addendum or supplement to the specification has been acknowledged by the bidder. The adequacy of bid bonds or certified checks must be verified at this time.

(f) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must determine that all reasonable measures have been taken to assure competition prior to awarding the contract. This determination must be documented and such documentation submitted to RUS where required by subpart A of this part. The borrower may, however, elect to reject all bids, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(3) *Minor errors or omissions in the specification.* If minor errors or omissions in the specification are found, the borrower must issue an addendum to each prospective bidder correcting the error or omission prior to opening any bids. After bid opening, the error or omission must be corrected in the executed contract.

(4) *Minor errors or irregularities in bid.* The borrower may waive minor errors or irregularities in any bid, if the borrower determines that such minor errors or irregularities were made through inadvertence. Any such minor errors or irregularities so waived must

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be corrected on the bid in which they occur prior to the acceptance thereof by the borrower.

(5) *Non-minor error or irregularity in bid.* If a bid contains a non-minor error or irregularity, the bid must be rejected and the bid price must not be disclosed.

(6) *Unbalanced bid.* If a bid contains disproportionate prices between labor and materials or between various construction units, the borrower may reject the bid.

(7) *No acceptable price quoted.* If none of the bidders quote an acceptable price, the borrower may reject all bids.

(g) *Evaluating bids.* The borrower (acting through the engineer, if applicable) must conduct the evaluation of bids on the basis of the criteria set out in the "Notice and Instructions to Bidders." The contract, if awarded, must be awarded to the bidder with the lowest evaluated responsive bid.

(h) *Announcement of bids.* If possible, the borrower will announce bids at the bid opening. However, where extensive evaluation is required, the borrower may elect to adjourn and make formal written announcement to all bidders at a later time. Any discrepancy in a rejected bid must be indicated in the bid announcement.

(i) *Award of contract.* Upon completion of the bid evaluations and based upon the findings and recommendations of the borrower's management and engineer, the borrower's board of directors will either:

(1) Resolve to award the contract to the lowest evaluated responsive bidder; or

(2) Reject all bids.

(j) *Certification by the borrower and its engineer.* The borrower shall certify and the engineer shall certify as follows: "The procedures for formal competitive bidding, as described in 7 CFR 1726.201, were followed in awarding this contract." The certification executed by and on behalf of the borrower and its engineer shall be submitted to RUS in writing where required by subpart A of this part.

§ 1726.202 Informal competitive bidding.

Informal competitive bidding may be used for equipment purchases and gen-

eration construction. The borrower must use the following procedure for informal competitive bidding:

(a) *Selection of qualified bidders.* The borrower (acting through its engineer, if applicable) will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its qualified bidder list for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower (acting through its engineer, if applicable) is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and any other action necessary to procure full, free and competitive bidding. In any event, however, sufficient invitations need to be sent out to assure competition and that at least three bids will be received. Subject to the criteria in the preceding sentence, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Notice and instructions to bidders.* The borrower must indicate in the "Notice and Instructions to Bidders" section of the bid documents that bids will be opened privately. The borrower may elect to conduct clarifying discussions with the bidders. If such clarifying discussions are held, at least the three apparent low evaluated bidders must be given an equal opportunity to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price for a responsive bid.

(d) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (e.g., power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will not evaluate a bidder's performance record, safety record, and similar factors when evaluating a bid from a qualified and invited bidder. Such factors are to be considered when determining whether to include a particular bidder on the qualified bidders list.

(e) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of

each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(f) *Bid opening.* The contracting committee will conduct the bid opening in private. The contracting committee will open each bona fide bid which has been received prior to the deadline, and review it for any irregularities, errors, or exceptions. It must be verified that any addendum to the specification has been acknowledged by each bidder. The adequacy of bid bonds or certified checks must also be verified.

(g) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must determine that all reasonable measures have been taken to assure competition prior to awarding the contract. This determination must be documented and such documentation submitted to RUS where required by subpart A of this part. The borrower may, however, elect to reject all bids, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(h) *Clarification of proposals.* The contracting committee may elect not to hold any clarifying discussions and recommend awarding the contract to the low responsive bidder. Otherwise, the contracting committee must give at least each of the three apparent lowest evaluated bidders an equal opportunity to participate in discussions 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 clarifying discussions, the contracting committee will determine the lowest evaluated responsive bid. If no bids are responsive after the contracting committee has completed clarifying discussions, no contract award can be made under the informal bidding procedure.

(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 lowest evaluated responsive 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 informal competitive bidding as described in 7 CFR 1726.202 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.

§ 1726.203 Multiparty negotiation.

Multiparty negotiation may only be used where permitted under subpart F of this part or where prior RUS approval has been obtained. The borrower must use the following procedure for multiparty negotiation:

(a) *Selection of qualified bidders.* The borrower (acting through its engineer, if applicable) will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its qualified bidder list for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower (acting through its engineer, if applicable) is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and any other action necessary to procure full, free and competitive bidding. In any event, however, sufficient invitations need to be sent out to assure competition and so that at least three bids will be received. Subject to the criteria in the preceding sentence, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Notice and instructions to bidders.* The borrower must indicate in the "Notice and Instructions to Bidders" section of the bid documents that bids will be opened privately. The borrower may elect to conduct negotiations with the bidders. If such negotiations are held, at least the three apparent low evaluated bidders must be given an equal opportunity to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price.

(d) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (e.g., power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will not evaluate a bidder's performance record, safety record, and similar factors when evaluating a bid from a qualified and invited bidder. Such factors are to be considered when determining whether to include a particular bidder on the qualified bidders list.

(e) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(f) *Bid opening.* The contracting committee will conduct the bid opening in private. The contracting committee will open each bona fide bid which has been received prior to the deadline, and review it for any irregularities, errors,

or exceptions. It must be verified that any addendum to the specification has been acknowledged by each bidder. The adequacy of bid bonds or certified checks must also be verified.

(g) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must determine that all reasonable measures have been taken to assure competition prior to awarding the contract. This determination must be documented and such documentation submitted to RUS where required by subpart A of this part. The borrower may, however, elect to reject all bids, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(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 competition 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: