

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RIN 0572-AB35

Special Equipment Contract (Including Installation)

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulation on RUS Telecommunications Standards and Specifications for Material, Equipment and Construction. This action codifies RUS Form 397, Special Equipment Contract (including installation) and announces a general revision of RUS Form 397. This contract incorporates amendments currently attached to the RUS Form 397, Special Equipment Contract, and updates contract terms and format.

DATES: Written comments must be received by RUS or carry a postmark or equivalent not later than April 21, 1998.

ADDRESSES: Submit written comments to Orren E. Cameron III, Director, Telecommunications Standards Division, Rural Utilities Service, US Department of Agriculture, STOP 1598, 1400 Independence Ave., SW, Washington, DC 20250-1598. RUS requires a signed original and three copies of all comments (7 CFR part 1700.30(e)). All comments received will be made available for public inspection at Room 4034, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Gary B. Allan, Chief, Transmission Branch, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, STOP 1598, 1400 Independence Ave., SW, Washington, DC 20250-1598, telephone number (202) 720-0665.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, Regulatory Planning and Review, and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS programs provide and finance grants and loans to RUS borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits which ultimately offset any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the proposed rule were approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572-0059.

Send questions or comments regarding this burden or any aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, US Department of Agriculture, STOP 1522, Washington, DC 20250-1422, FAX: (202) 720-1422.

Unfunded Mandates

This rule contains no Federal mandates for State, local, and tribal governments for the private section. Thus, this is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Intergovernmental Review

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

RUS has issued a series of 7 CFR chapter XVII parts which serve to implement the policies, procedures and requirements for administering its loan and loan guarantee programs and the loan documents and security instruments which provide for secure RUS financing. This revision to 7 CFR part 1755 codifies RUS Form 397, Special Equipment Contract (including installation). The 7 CFR part 1755 also describes where copies of the contract may be obtained. RUS telecommunications borrowers are required to use the RUS Form 397 when purchasing and installing special equipment financed with loan funds. Divestiture, competition, legislation and regulation changes have made the current RUS Form 397 outdated. Contract terms and obligations have been modified and updated to reflect

present business practices as well as changes in technology, services and equipment. The changes to the proposed RUS Form 397 include but are not limited to the following: sealed bid requirements; bid bond requirements; format for listing bid prices and alternatives; delivery and installation requirements; and particular undertakings of the bidder requirements.

List of Subjects in 7 CFR Part 1755

Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For the reasons set forth in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

§ 1755.397 [Redesignated as § 1755.396]

2. Section 1755.397 is redesignated as § 1755.396.

3. Section 1755.397 is added to read as follows:

§ 1755.397 Form 397, special equipment contract (including installation).

The contract form in this section shall be used when purchasing and installing special equipment, which includes but is not limited to digital carrier equipment, fiber optic equipment and microwave equipment, financed with loan funds. The RUS Form 397, special equipment contract (including installation) follows:

Notice and Instructions to Bidders Special Equipment Project (Including Installation)

1. Sealed Proposals for the engineering, furnishing, delivery and installation of special telephone equipment, materials and software (hereinafter called the "Equipment") for the

_____ (hereinafter called the "Owner") which is to be part of the system known as

_____ to be financed pursuant to a loan contract between the Owner and the United States of America (hereinafter called the "Government") by the

Administrator of the Rural Utilities Service (hereinafter called the "Administrator") will be received by the Owner on or before

_____ o'clock, _____ .M., _____,

at _____ at which time and place the Proposals will be publicly opened and read. The Rural Telephone Bank may also be a party to the loan contract.

2. The Bid Documents, composed of plans, specifications and drawings (hereinafter called the "Specifications"), together with all necessary forms and other documents for Bidders, may be obtained from the Owner or from the Engineer, at the latter's office at _____

_____ The Documents may be examined at the office of the Owner or at the office of the Engineer. A copy of the loan contract between the Owner and the Government may be examined at the office of the Owner.

Each set of Bid Documents will have a serial number, assigned by the Engineer, and the number of each set with the name of the Bidder will be recorded by the Engineer. Bids will be accepted only from original Bidders, or from some other qualified Bidder to whom such a set has been transferred by the original Bidder with the approval of the Engineer prior to the pre-bid technical session.

3. A pre-bid technical session will be held with each Bidder during the week of _____, at _____, for the purpose of receiving the Bidder's Technical Proposal, discussing details of the Project(s), and considering suggestions from Bidders. The Owner shall attach to this Notice a list of the information required in the Bidder's Technical Proposal. Each Bidder will be given a specific time period for the pre-bid technical session. At the pre-bid technical session, the Bidder shall fully describe to the Owner any exceptions to the Specifications the Bidder may request. In addition, the Bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner decides to incorporate any changes into the Specifications, the Owner shall furnish all prospective Bidders a copy of the Specifications containing such revisions (the "Revised Specifications") and all Bids shall be made on the basis of the Revised Specifications. At this session, the Bidder shall identify all documentation and materials that it claims constitute agreed excluded

documentation under Section (2)(xi) of the Software License Agreement, 7 CFR § 1753.38. The Bidder shall claim as agreed excluded documentation only those items it may be unable to provide to the Borrower as required by said Section (2)(xi). The Engineer shall immediately provide a list of all items so identified to the appropriate RUS office. The Engineer shall inform the Bidder at least _____ days before the scheduled bid opening whether either the Engineer or RUS will reject the Bid because of items so identified. The Licensor, as defined in the Software License Agreement, shall agree that certain licensed software cannot be excluded from the requirements of said Section (2)(xi), including but not limited to software that would significantly impair the operation of the System, would significantly impair the ability of the Owner to generate revenue, or would, in the opinion of RUS, pose a risk to RUS loan security. If allowed, the agreed excluded documentation shall be individually identified in an attachment to the Bid. No bid shall be accepted from a Bidder who fails to attend the pre-bid technical session or fails to demonstrate to the Owner that its equipment meets the requirements of the Specifications.

4. Proposals shall be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, the license number (if the State requires a license to bid on a project), and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be in ink or typewritten. No alterations or interlineations will be permitted, unless made, initialed, and dated before submission.

5. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the Specifications, Bidder's Proposal and Acceptance, and Contractor's Bond attached hereto, and shall become informed as to the location and characteristics of the proposed equipment installations, the transportation facilities, the kind of facilities required before and during the delivery and installation of the equipment and materials, the general local conditions and all other matters that may affect the cost and the time of completion of the installations. Bidders will be required to comply with all applicable statutes, codes, and regulations, including those pertaining to the licensing of contractors and the "Anti Kick-Back Acts," as amended, (40

U.S.C. 276c; 41 U.S.C. 51 *et seq.*) and regulations issued pursuant thereto, and 18 U.S.C. 287, 874, 1001, as amended.

6. Each Proposal must be accompanied by a Bid Bond, RUS Form 307, or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum possible bid price. The maximum possible bid price is the sum of the total base bid, spare parts, maintenance tools and all positive amounts for alternatives. Each Bidder agrees that, if its Proposal is one of the three low Proposals, its Bid Bond or check shall be held by the Owner until a Proposal is accepted and a Contractor's Bond, when required, is furnished by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed ninety (90) days from the date hereinbefore set for the opening of Proposals whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned to the Bidder within a period of thirty (30) days.

7. The successful Bidder will be required to furnish to the Owner a Contractor's Bond in conformance with

the requirements of 7 CFR Part 1788, Subpart C, Insurance for Contractors, Engineers, and Architects.

8. Should the successful Bidder fail or refuse to furnish a Contractor's Bond within thirty (30) days after written notification of the award of the Contract by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled to (a) enforce the Bid Bond in accordance with its terms, or (b) retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project(s). The term "successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the Contract or to furnish a Contractor's Bond.

9. If requested by the Owner or the Administrator, the Bidder shall furnish evidence, satisfactory to the Owner and the Administrator, that the Bidder has the necessary facilities, ability, and financial resources to perform the Contract.

10. The Contract, when executed, shall be deemed to include the entire

agreement between the parties thereto and neither party shall claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the other or by any other person.

11. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the execution of any Contract which may be awarded thereon. Failure to provide a Bid Bond or check as specified in item six (6) above is not a minor irregularity.

12. The Owner reserves the right to reject any or all Proposals.

13. Equal Opportunity and Employment.

(a) The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

(b) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

| Timetables | Goals for minority participation for each trade | Goals for female participation in each trade |
|------------|---|--|
| | (Insert goals for each year.) | (Insert goals for each year.) |

(i) These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

(ii) The Contractor's compliance with Executive Order 11246 and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and

women without discrimination on each of its projects. Transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246 and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

(c) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of ten thousand dollars (\$10,000) at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(d) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is

 (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any.)

Note: Paragraph 13 is applicable to the extent required by law. If applicable, certain information needs to be inserted at subparagraphs (b) and (d). In determining whether and how this paragraph is applicable, reference should be made to the Department of Labor Office of Federal Contract Compliance Programs regulations (41 CFR Chapter 60.)

By _____
 Owner

 Title

 Date

Bidder's Proposal to Engineer, Furnish, Deliver, and Install Equipment and Materials

(Proposal shall be submitted in ink or typewritten)

To: _____
(Hereinafter called the "Owner")

The undersigned (hereinafter called the "Bidder") hereby proposes to engineer, furnish, deliver, install, align and test the equipment, materials and software (hereinafter called the "Equipment") described in the plans, specifications and drawings (hereinafter called the "Specifications") prepared by

the Owner and attached hereto and made a part hereof, financed by a loan to the Owner made or guaranteed by the United States of America, acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator"), or by loans to the Owner by the United States of America and by the Rural Telephone Bank, and designated _____.

The Bidder has become informed as to the location and characteristics of the proposed Equipment and the facilities over which the Equipment is to perform, has become informed as to the kind of facilities required before and during the

delivery and installation of the Equipment and has become acquainted with the labor conditions which would affect the work.

The Bidder agrees that if its bid is accepted the following terms and conditions shall govern.

If, in submitting this Proposal, the Bidder has taken any exception to the form of proposal furnished by the Owner, the Bidder understands that the Owner and the Administrator may evaluate the effect of such change as they see fit and they may exclude the Proposal from consideration in determining the award of the Contract.

Article I

Section 1. Bid Price. The Bidder will engineer, furnish, deliver, install, align and test the equipment, materials, and software described in the Specifications for the following sums:

| (1) Location by exchange | (2) Equipment | (3) Cost | (4) Installation | (5) Base bid | Time in calendar days | | (8) Spare parts | (9) Item | (10) Maintenance tools |
|-----------------------------|------------------|-------------|---------------------|-----------------|-----------------------|------------------------------|--------------------|-------------|---------------------------|
| | | | | | (6) Delivery | (7) Completion of project | | | |
| | | \$ | \$ | \$ | | | \$ | a | \$ |
| | | \$ | \$ | \$ | | | \$ | b | \$ |
| | | \$ | \$ | \$ | | | \$ | c | \$ |
| | | \$ | \$ | \$ | | | \$ | d | \$ |
| | | \$ | \$ | \$ | | | \$ | e | \$ |
| | | \$ | \$ | \$ | | | \$ | f | \$ |
| | | \$ | \$ | \$ | | | \$ | g | \$ |
| | | \$ | \$ | \$ | | | \$ | h | \$ |
| | | \$ | \$ | \$ | | | \$ | i | \$ |
| | | \$ | \$ | \$ | | | \$ | j | \$ |
| Totals | | \$ | \$ | XXXXXXXX | XXXXXXX | XXXXXXX | \$ | XX | \$ |
| Total Base Bid | | \$ | \$ | \$ | XXXXXXX | XXXXXXX | XXXXXXX | XX | XXXXXXX |
| Alternate No. 1 | | \$ | \$ | \$ | | | | k | \$ |
| Alternate No. 2 | | \$ | \$ | \$ | | | | l | \$ |
| Alternate No. 3 | | \$ | \$ | \$ | | | | m | \$ |
| Alternate No. 4 | | \$ | \$ | \$ | | | | n | \$ |
| Alternate No. 5 | | \$ | \$ | \$ | | | | o | \$ |
| Alternate No. 6 | | \$ | \$ | \$ | | | | p | \$ |

Section 2. Acceptable Equipment. Unless otherwise specified by the Owner (and agreed to in advance in writing by RUS), the Bidder agrees to furnish under this Proposal only equipment which is currently included in the "List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers", RUS Informational Publication 344-2. [Note: foreign manufactured products must be covered by a currently valid letter of technical acceptance issued by the Chairman, Committee "A" (Telecommunications)]. The Bidder agrees also to furnish only materials, equipment and software which are new and most recent issue and manufacture as of the date of the bid opening.

Section 3. Changes in Project. The Owner, with the approval of the Administrator, may from time to time during the performance of the Contract, make reasonable changes, additions to

or subtractions from the Specifications which are part of the Proposal as conditions warrant. However, if substantial changes in the Project shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefore to the Owner within thirty (30) days after any such change is made. Further, if the cost to the Bidder shall be increased or decreased by any such change or addition, the Contract price shall be increased or decreased by a reasonable amount in accordance with a contract amendment signed by the Owner and the Bidder and approved by the Administrator. No claim for additional compensation for any such change or add-on will be considered unless the Bidder shall have made a written request to the Owner prior to the commencement of work in connection with such change or addition. The Delivery or Completion of Project time

in calendar days specified under Columns 6, "Delivery", and 7, "Completion of Project", in Article I, Section 1, can only be changed by a contract amendment approved by the Bidder, the Owner and RUS.

Section 4. Taxes. The bid prices herein set forth do not include any amounts payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment to be incorporated in the Project(s). If any such tax is applicable to the sale, purchase or use of the Equipment thereunder, the amount thereof shall be stated separately on all invoices and paid by the Owner.

Article II

Delivery and Installation

Section 1. Time of Completion of Installation. The time of delivery of the

Equipment and of Completion of Project is of the essence of this Contract. The Bidder shall deliver the Equipment within the number of calendar days specified under Column 6, "Delivery", in Article I, Section 1, after the Administrator shall have approved this contract in writing and shall complete the installation of Equipment in accordance with the terms of this Contract and Specifications to the satisfaction of the Owner and the Administrator within the number of calendar days specified under Column 7, "Completion of Project", in Article I, Section 1. The time for such "Delivery" or "Completion of Project" shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Bidder, including, but not limited to, acts of God, fires, strikes, floods, changes in the Specifications as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible. However, no such extension of time shall be granted the Bidder unless within twenty (20) days, after Bidder becomes aware of the happening of any event relied upon by the Bidder for such an extension of time, the Bidder shall have made a request therefor in writing to the Owner. Further, no delay in such time for "Delivery", "Completion of Project", or in the progress of the work shall result in any liability on the part of the Owner, except that the Owner shall be responsible for and shall pay the Bidder on demand all additional, supportable costs and expenses incurred by the Bidder due to delays to the extent such delays are caused by the Owner's failure to perform its obligations under this Contract unless the Owner's failure to perform is caused by forces beyond its control.

Section 2. Supervision and Inspection. The Bidder shall give adequate supervision to the work at the site of the Project(s), using the Bidder's best skill and attention. The Bidder shall carefully study and compare all drawings, specifications, and other instructions and shall promptly report to the Owner any error, inconsistency or omission which Bidder may discover. The Bidder shall keep on the Project(s) during its progress a competent superintendent (hereinafter called the "Superintendent") and any necessary qualified assistants, all satisfactory to the Owner. The Superintendent shall represent the Bidder and all directions given to the Superintendent by the Owner shall be as binding as if given to the Bidder. When requested, such directions shall be confirmed in writing.

The Owner shall make available during installation a competent representative to coordinate installation activities with the Bidder, including coordination with any connecting company.

Section 3. Alignment, Inspection and Tests. The Bidder shall install, adjust and align the Equipment in accordance with the Specifications. The Bidder shall notify the Owner in writing upon completion of installation and alignment of each Project. In addition, the Bidder shall provide the necessary test equipment and perform the inspections and tests specified in the Specifications under the direct supervision of the Owner or its Engineer. The Owner shall receive a copy of the results of all tests conducted by the Bidder. All Equipment furnished for Project(s) shall be subject to the inspection, test and approval of the Owner and Administrator. The Bidder shall furnish all pertinent information required concerning the nature or source of materials. The Owner and the Administrator shall have the right to inspect pertinent records (other than manufacturing cost information) of the Bidder and of any subcontractor relevant to the Project(s). The Owner shall provide all reasonable facilities necessary for such inspection and tests. Failure of the Owner to make inspections shall not release the Bidder from performances required hereunder.

(a) The Owner shall make inspections and determine if results of the tests for each Project are in compliance with the Specifications. The Owner must notify the Bidder, within thirty (30) days after the written notification of Completion of Project from the Bidder, of any deficiencies or corrective measures necessary and whether these corrections shall be made by the Owner or the Bidder.

(b) If, at the request of the Owner, the Bidder shall have commenced work prior to the completion of facilities over which the equipment is to operate or if arrangements with connecting companies for joint testing have not been completed and the Bidder shall have incurred additional expenses because of delays or additional work resulting from lack of completion of such facilities or arrangements, the Owner shall pay the Bidder for such reasonable additional expense. The Owner shall also pay the Bidder for such reasonable additional expenses for the corrections, realignment and retesting the Bidder is required to perform due to the above conditions, including, if necessary, the added expense of returning to the Project. If tests subsequent to this are made

necessary by the Bidder's failure to satisfactorily resolve all such deficiencies or corrective measures, the Bidder shall pay the Owner for the cost incurred by the Owner for all such subsequent tests.

Section 4. Delivery of Possession and Control to the Owner. The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of Completion of the Project or on an earlier date if agreed under Article IV, Section 2.

Section 5. Employees. The Owner shall have the right to require the removal of any employee of the Bidder from the Project site if in the judgment of the Owner such removal is necessary in order to protect the interests of the Owner.

Section 6. Defective Workmanship, Materials or Software. Throughout the warranty period defined below, the Bidder shall, within thirty (30) days of written notification from the Owner, and without charge to the Owner, at the Bidder's option, either remedy or replace any materials, equipment or software found to be defective in material, workmanship or installation, or not in conformity with the Specification. This is subject to the following definitions and conditions:

(a) The warranty start date for the Project is the date of delivery of possession and control by the Bidder to the Owner of that Project included in the Contract. Refer to Article II, Section 4. The warranty period is twelve (12) months from the warranty start date, or six (6) months from Completion of Project, whichever results in the longer period of coverage.

(b) Without regard to the expiration of the warranty period set forth above, the Bidder warrants to the Owner that any Software furnished under this Contract shall function, for a period of twelve (12) months from the warranty start date defined in the Contract, in accordance with the specifications and any written or printed technical material provided by the Bidder to explain the operation of the Software and aid in its use. The Bidder shall correct all deficiencies within thirty (30) days from the date of receipt by the Bidder or written notice of such deficiencies from the Owner. An extension of this thirty (30) day period may be allowed only if agreed upon by the Owner. It shall be the Bidder's obligation to insert and thoroughly test, at no charge to the Owner, any software alteration provided to satisfy the obligations of this Section 6. If a deficiency is detected or a correction made within the final ninety (90) days of the warranty, the warranty shall be

extended to a date ninety (90) days after the deficiency has been corrected.

(c) This warranty is not diminished by the acceptance of workmanship, materials, equipment or software, or by the issuing of any certificate with respect to the Completion of the Project.

(d) This warranty does not cover defects in materials, equipment or software that are caused by modifications to or abuse of materials, equipment or software by the Owner.

(e) The Owner shall bear the cost and risk of shipping defective components to the Bidder's designated repair center. The Bidder shall bear the cost and risk of shipping new or repaired replacement components to the Owner.

Article III

Payments and Releases of Lien

Section 1. Payment to Bidder. (a) The Owner shall pay the Bidder upon the basis of written estimates of the Equipment delivered at the site of the Project, presented by the Bidder, and approved by the Owner, the following percentages of the price of the materials, equipment and software for each Project set forth under Column 3, "Cost", in Article I, Section 1, as and if revised:

(i) Forty-five percent (45%) when fifty percent (50%) of the materials, equipment and software for each Project has been delivered at the site of the Project(s), and

(ii) Ninety percent (90%) when all of the materials, equipment and software required to place each Project into operation has been delivered at the site of the Project(s).

(b) Upon the Completion of Project, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, the Owner shall inspect the work performed thereunder and if the work shall be found to be in accordance with the Specifications and all provisions thereunder, the Owner shall certify as to that fact and as to the amount of the balance found to be due to the Bidder. No later than thirty (30) days after Completion of Contract, as defined in Article VII, Section 1, "Definitions" the Owner shall submit such final certificate to the Administrator for approval and when such approval has been given, the Owner shall pay to the Bidder all unpaid amounts to which the Bidder shall be entitled thereunder; provided, however, such final payments shall be made not later than sixty (60) days after Completion of the Contract unless approval by the Administrator shall be withheld or delayed due to Bidder's actions or failure to act.

(c) Payment on undisputed invoices submitted by the Bidder shall be due

thirty (30) days after receipt. Any amounts of these invoices not paid when due shall accrue interest at a rate one and one-half percent (1 1/2%) higher than the "Prime Rate" published in the Wall Street Journal in its first issue of the month in which payment becomes due and changing each subsequent month with the first issue published in the respective month.

(d) Acceptance by the Owner of equipment, materials, workmanship or software while the Bidder is in default under any provision of this Contract shall not be construed as a waiver by the Owner of any right thereunder including, without limitation, any right to liquidated damages the Owner may have by virtue of Article V, Section 2.

Section 2. Release of Liens. Upon the Completion of Project by the Bidder, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, the Bidder shall deliver to the Owner, (a) two (2) original Waiver and Release of Lien, in the form attached hereto, from manufacturers, material suppliers and subcontractors who have furnished materials or services for the work, and (b) two (2) original Certificate of Contractor, in the form attached hereto, to the effect that all labor has been paid and that all such releases have been submitted to the Owner; and the Owner shall deliver to the Administrator for approval one of the originals of each such release and certificate.

(a) In lieu of releases of liens where the Bidder is the equipment manufacturer, the Bidder may deliver to the Owner, in duplicate, (1) a Certificate of Contractor and Indemnity Agreement stating that all manufacturers, material suppliers and subcontractors who have furnished materials or services for the Project(s) have been paid in full, and (2) an agreement to indemnify the Owner harmless against any liens arising out of the Bidder's performance thereunder which may have been or may be filed against the Owner.

(b) In this Article III "manufacturer" shall mean a Bidder who makes, produces or manufactures the equipment and whose interest, including non-contracted installation, represent more than fifty percent (50%) of the value of the Total Contract Price.

Article IV

Particular Undertakings of the Bidder

Section 1. Protection to Persons and Property. At all times when equipment and materials are being delivered and installed, the Bidder shall exercise reasonable precautions for the safety of employees on the job and of the public,

and shall comply with all applicable provisions of Federal, State and Municipal safety, building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State or Municipal laws or regulations. The following provisions shall not limit the generality of the above requirements:

(a) The Bidder shall at all times keep the premises free from accumulations of waste material or rubbish caused by its employees or work, and at the completion of the work, the Bidder shall remove all rubbish from and about the Project(s) and all tools, scaffolding and surplus materials and shall leave its work "broom clean."

(b) The work, from its commencement to completion, or to such earlier date or dates when the Owner may take possession and control, shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith, and in connection with the Equipment to be used therein, shall be borne by the Bidder. The Bidder shall make good and fully repair all damages to the Equipment under the control of the Bidder by reasons of any act of God, or any other casualty of cause whether or not the same shall have occurred by reason of the Bidder's negligence. The Bidder shall hold the Owner harmless from any and all claims for injuries to persons or for damage to property happening by the reason of any negligence on the part of the Bidder or any of the Bidder's agents, subcontractors or employees during the control by the Bidder of the Project(s) or any part thereof. The Owner shall promptly notify the Bidder in writing of any such claims received and, except where the Owner is the claimant, shall give to the Bidder full authority and opportunity to settle such claims, and reasonably cooperate with the Bidder in obtaining information relative to such claims.

(c) Monthly reports of all accidents shall be promptly submitted by the Bidder, giving such data as may be prescribed by the Owner.

Section 2. Termination of Bidder's Risks and Obligations. The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of Completion of the Project. However, at any time after payment by the Owner to the Bidder of ninety percent (90%) of the Total Base Bid plus accepted

alternatives for that Project, but prior to Completion of the Project, the Owner and Bidder may agree in writing to an earlier date of delivery of possession and control. Upon such delivery of the possession and control of any Project, the risks and obligations of the Bidder, as set forth in Article IV, Section 1(b), pertaining to such Project shall be terminated; provided, however, that nothing herein contained shall relieve the Bidder of its obligation for full performance any liability with respect to defective workmanship or materials as specified in Article II, Section 6, hereof. The equipment shall not be placed in service until transfer of possession and control to the Owner has been accomplished, as set forth above.

Section 3. Insurance. During the Bidder's performance hereunder, the Bidder shall take out and maintain fully paid insurance providing not less than the minimum coverage required by 7 CFR Part 1788, Subpart C.

(a) The Owner shall have the right to require public liability insurance and property damage liability insurance greater than the amounts specified in 7 CFR Part 1788, Subpart C. If this requirement is included in the Specifications used for bidding, the added costs shall be included in the Bid Price. If the requirement is added after the Contract is approved, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price, by Contract amendment.

(b) Upon request by the Administrator, the Bidder shall furnish to the Administrator a certificate in such form as the Administrator may prescribe evidencing compliance with the foregoing requirements.

Section 4. Purchase of Materials. The Bidder shall purchase all materials and supplies outright and not subject them to any conditional sales agreements, bailment lease or other agreement reserving unto the Bidder any right, title or interest therein. Materials and supplies shall become the property of the Owner as the Owner makes payments therefor to the Bidder in accordance with Article III, Section 1(a). Unless otherwise specified, all materials shall be new.

Section 5. Assignment of Guarantees. All guarantees of materials, equipment, software and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner on Completion of the Project and at such time as the Bidder receives final payment. Any such guarantees shall be in addition to the Bidder's warranty defined in Article II, Section 6. This provision may be modified with respect

to a particular warranty if the Bidder demonstrates to the satisfaction of RUS and the Owner that a transfer is not possible.

Section 6. Patent, Copyright, Trademark and Trade Secret Infringement. The Bidder shall hold harmless and indemnify the Owner from all claims, suits, and proceedings for the infringement of any patent, copyright, trademark or violation of trade secrets covering any equipment, materials, software, supplies or installation methods used in the work, except for items of the Owner's design or selection. If the Owner's use of equipment or software is enjoined, the Bidder shall promptly, at its own expense, modify or replace the infringing equipment or software so that it no longer infringes but remains functionally equivalent, or obtain for the Owner a license or other right to use. This shall be in addition to any other rights or claims which the Owner may have. The Bidder shall, at its own cost, (and the Owner agrees to permit Bidder to do so) defend any suits which may be instituted by any party against the Owner for alleged infringement of patents, copyright, trademark or violation of trade secrets relative to the Bidder's performance hereunder. Either party shall notify the other promptly of any such claims, and the Owner shall give to the Bidder full authority and opportunity to settle such claims, and shall reasonably cooperate with the Bidder in obtaining information relative to such claims.

Section 7. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable laws, statutes, ordinances, rules or regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901-950b), the Anti-Kickback Acts, as amended (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*), and any rules and regulations issued pursuant thereto, and 18 U.S.C. 201, 286, 287, 641, 666, 874, 1001, 1361 and 1366, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of the Governmental agencies having jurisdiction on the premises.

(a) The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985-1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR Part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR part 3017.

(b) The Bidder represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121,

Section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions" and any rules and regulations issued pursuant thereto.

Section 8. Software License. The software licensing agreement, if required, covering the rights, terms and conditions of the use and assignability of all software integral to the operation of the Project(s), shall adhere to 7 CFR part 1753, Subpart E, RUS software licensing requirements. The warranty period for all software under this contract shall be in accordance with Article II, section (6)(b).

Article V

Remedies

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the work hereunder, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the surety or sureties upon the Bidder's Bond or Bonds, if any, a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within thirty (30) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Owner and the Administrator, shall be made by the Bidder or its surety or sureties, the Owner may take over the performance of the Bidder's obligations hereunder and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its surety or sureties shall be liable to the Owner for any cost or expense in excess of the Bid Price occasioned thereby. In such event, the Owner may take possession of and utilize, in completing the Project(s), any tools, supplies, equipment, appliances and plant belonging to the Bidder which may be situated at the site of the Project(s). The Owner, in such contingency, may exercise any rights, claims or demands which the Bidder may have against third persons in connections herewith and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. Should the Bidder neglect, refuse or fail to complete any Project as shown under Column 7, "Completion of Project" in Article I, Section 1, within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in

view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of:

_____ dollars (\$ _____)

for _____
(Project)

per day for each and every day that such completion is delayed beyond the specified time for Completion of the Project, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full; provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, or claimed as liquidated damages was computed. The Bidder shall pay to the Owner the amount necessary to effect such payment in full. Such payment is not to be reduced by the value of any partial performance by the Bidder.

At the technical sessions, each Bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner allows these features to be bid as separate Projects, then they are to be individually listed under Columns 1 through 10, in Article I, Section 1. These unproven features and capabilities are to be individually listed in this Section 2 also, with liquidated damages amounts determined by the Owner and stated for each. If a Bidder neglects to identify any such feature at the technical session, delay in providing the feature is considered a delay in completing the associated Project and the Owner may assess liquidated damages listed for that Project regardless of whether the Project is placed in service.

Section 3. Consequential Damages. In no event shall the Bidder's liability for incidental or consequential loss or damage, except for personal injury or tangible property damage, exceed the amount of ten times the total contract price, as amended.

Section 4. Enforcement of Remedies by Administrator. The Administrator may, on behalf of the Owner, exercise any right or enforce any remedy which the Owner may exercise or enforce hereunder.

Section 5. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election; provided, however, that the provisions of Section 2 of this Article V shall be the exclusive measure of damages for the failure by the Bidder to have effected the Completion of Project within the time herein agreed upon.

Article VI

Equal Employment

Section 1. The Bidder.

(a) The Bidder represents that:

(i) It has _____, does not have _____, 100 or more employees, and if it has, that

(ii) It has _____, has not _____, submitted the Equal Employment Opportunity Employers Information Report EEO-1, Standard Form 100, required of employees with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

(b) The Bidder agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

(c) The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than \$10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(d) The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated

facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 2. During the performance of this contract, the Bidder agrees as follows:

(a) The Bidder will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability.

(c) The Bidder will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Bidder's books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Bidder's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Bidder will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such

litigation to protect the interests of the United States.

Section 3. Equal Employment Opportunity Specifications.

(a) As used in these specifications:

(i) "Covered area" means the geographical area described in the solicitation from this contract;

(ii) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

(iii) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, United States Treasury Department Form 941; and

(iv) "Minority" includes:

(1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(b) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(c) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the United States Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the

EEO clause, and to make a good faith effort to achieve each goal under the Plan for each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(d) The Contractor shall implement the specific affirmative action standards provided in paragraphs (g) (i) through (xv) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the **Federal Register** in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the Department of Labor.

(g) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve

maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(i) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(ii) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractors or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(iii) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

(iv) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(v) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (g)(ii) above.

(vi) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(vii) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(viii) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(ix) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(x) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority Contractor's work force.

(xi) Validate all tests and other selection requirements where there is an

obligation to do so under 41 CFR part 60-3.

(xii) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(xiii) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(xiv) Document and maintain a record of all solicitations of offers or subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(xv) Conduct a review, at least annually of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(h) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations under (g) (i) through (xv). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (g) (i) through (xv) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of Executive Order

11246 if a particular group is employed in a substantially disparate manner (for example, even though the Contractor may be in violation of Executive Order 11246 if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, national origin or disability.

(k) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(m) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

(n) The Contractor shall designate a responsible official monitor for all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this

requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Section 4. In this Article VI—

(a) The term "Contractor" shall also mean "Bidder" or "Subcontractor" as applicable.

(b) The provisions of Sections 2 and 3 of this Article are applicable to the extent required by law. In determining whether these Sections are applicable, reference should be made to the Department of Labor Office of Federal Contract Compliance Programs regulations (41 CFR Part 60).

Article VII

Miscellaneous

Section 1. Definitions.

(a) The term "Completion of the Contract" shall mean accomplishment of Completion of the Project for all equipment materials and services listed under Column 2, "Equipment", in Article I, Section 1, and all alternatives accepted by the Owner, on the Owner's Acceptance.

(b) The "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The scheduled date for Completion of the Project is the date from which liquidated damages are computed. The actual date of Completion of the Project shall be the date of the receipt by the Owner from the Bidder of (i) all documents listed in Article III, Section 2, (ii) other final documents, and (iii) written notification that all deficiencies have been corrected, provided that the Owner finds the deficiencies satisfactorily resolved. If the deficiencies have not been satisfactorily resolved, the actual date of Completion of the Project shall be the date that the deficiencies are fully and satisfactorily resolved as determined by the Owner. The Certificate of Completion approved and signed by the Owner and approved in writing by the Administrator shall be conclusive evidence as to the fact of Completion of the Project and the date thereof. Full compliance with the procedure for "Completion of the Project" and an individual Certificate of Completion is required for each Project listed in Article I, Section 1.

(c) The "Contract" shall consist of the Notice and Instructions to Bidders, the Bidder's Proposal and the Owner's Acceptance, the Contractor's Bond and the Specifications.

(d) The term "minor errors or irregularities" shall mean a defect or variation in a Bidder's bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other Bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the borrower determines whether an error or irregularity is "minor."

(e) The term "placed in service" shall mean used by the Owner to earn revenue.

(f) The term "Project" shall mean any special equipment, including but not limited to carrier, lightwave or wireless systems, and all associated terminals (if any), which is listed under Column 2, "Equipment," in Article I, Section 1. A Project will have a single completion schedule listed under Column 7, "Completion of Project," in Article I, Section 1, and a single liquidated damages amount shown in Article V, Section 2. The Contract may consist of one or more Projects.

(g) The term "Software" shall mean computer programs contained on a tape, disc, semiconductor device or other memory device or system memory consisting of logic instructions and instruction sequences in machine-readable object code, which manipulate data in the specific special equipment to perform path diagnostic and recovery routines, control call processing, and perform peripheral control, and perform operations, administration, maintenance and provisioning functions; as well as associated documentation used to describe, maintain and use the programs provided under the Contract.

(h) The term "days" shall mean calendar days.

(i) The term "Specifications" shall mean the minimum performance requirements of the Owner as contained in the documents listed below, which are either attached or become a part of the Contract by reference, as amended by specific written exceptions contained in the Bidder's proposal and accepted by the Owner and the Administrator:

- RUS Form _____ , dated _____

Section 2. Continuing Equipment Support. Parts, Service, and Software. In addition to warranty repairs and replacement, the Bidder shall offer repair service and repair parts to the Owner in accordance with the Bidder's practices and terms then in effect, for the Bidder's manufactured equipment and software furnished pursuant to the Agreement. Such repair service or repair parts shall be available for as long as the Bidder is manufacturing or stocking such equipment and software, or for no less than five (5) years after the Bidder has ceased manufacturing or offering for sale such equipment and software.

Section 3. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country; provided that the articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, as amended. For purposes of this section, an "eligible country" is any country that applies with respect to the United States an Agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative. The Bidder agrees to submit to the Owner such certificates, signed by the Bidder and all subcontractors, with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 4. Confidentiality. All information supplied by the Bidder to the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Owner, shall be treated by the Owner as confidential information, and the Owner shall not reproduce any such information except for its own internal use and as authorized by this Contract, and shall use any information only for archival backup, in-house training, operating, maintenance and administrative purposes and in conjunction with its use of the equipment, materials and software furnished hereunder. All

information supplied to the Bidder by the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Bidder, shall be treated by the Bidder as confidential information, and shall not be used by the Bidder for any purpose adverse to the interests of the Owner, and shall not be reproduced or distributed by the Bidder except for the Bidder's use in its performance under this Contract. The foregoing confidentiality obligations do not apply to information which is independently developed by the receiving party or which is lawfully received by the receiving party free of restriction from another source having a right to so furnish such information, or is already known to the receiving party at the time of disclosure free of restriction. If the Bidder has failed to provide continuing equipment support as described in Article VII, Section 2, the Owner is released from this obligation. This provision does not restrict release of information by the United States of America pursuant to the Freedom of Information Act or other legal process.

Section 5. Entire Agreement. The terms and conditions of this Contract as approved by RUS supersede all prior oral or written understandings between the parties. There are no understandings or representations, expressed or implied, not expressly set forth herein.

Section 6. Survival of Obligations. The rights and obligations of the parties, which by their nature, would continue beyond the termination, cancellation, or expiration of this Contract, shall survive such termination or expiration.

Section 7. Non-Waiver. No waiver of any terms or conditions of this Contract, or the failure of either party to enforce strictly any such term or condition on one or more occasions, shall be construed as a waiver of the same or of any other terms or conditions of this Contract on any other occasion.

Section 8. Releases Void. Neither party shall require releases or waivers of any personal rights from representatives or employees or the other in connection with visits to its premises, nor shall such parties plead such releases or waivers in any action or proceeding.

Section 9. License. The Bidder shall comply with all applicable construction codes. (Check one.)

____ The Bidder warrants that it possesses contractor's license number _____ issued to him by the State of _____ in which the Project(s) is located, and said license expires on _____, 19 ____.

____ The Bidder warrants that no license is required in the State in which the Project(s) is located.

Section 10. Nonassignment of Contract. The Bidder will not assign the Contract, effected by acceptance of this Proposal, or any part hereof, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof, without the approval in writing of the Owner, the Surety, and the Administrator. However, the Bidder may subcontract the whole or any part of the installation work to be performed at the installation site, (as distinguished from furnishing and delivery of equipment and materials), provided that: (a) the Bidder shall be responsible for the performance thereof and (b) the Bidder shall obtain the consent of the surety to such subcontract. A copy of such consent shall be submitted to the Owner and the Administrator.

Section 11. Choice of Law. The rights and obligations of the parties and all interpretations and performance of this Contract shall be governed in all respects by the laws of the State of _____ except for its rules with respect to the conflict of laws.

Section 12. Approval of the Administrator. The acceptance of this proposal by the Owner shall not create a contract unless such acceptance shall be approved in writing by the Administrator within ninety (90) days after the date hereof:

By _____
(Signature of Bidder)

(Name—Type or Print)

(Title)

(Company Name of Bidder)

(Address of Bidder)

Attest:

(Secretary)

(Date)

The Proposal must be signed with the full name of the Bidder. In the case of a partnership the Proposal must be signed in the firm name by each partner. In the case of a corporation the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

(If executed by one other than President, a Vice-President, a partner or the individual owner, a power of attorney or other legally acceptable document authorizing execution shall accompany

this contract, unless such power of attorney is on file with RUS)

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the Proposal of

for the Project(s) herein described for the Total Base Bid of \$ _____ and Alternate For:

Space Parts, Item(s)

\$ _____

Maintenance Tools, Item(s)

\$ _____

Alternate No. 1 (add) (deduct)

\$ _____

Alternate No. 2 (add) (deduct)

\$ _____

Alternate No. 3 (add) (deduct)

\$ _____

Alternate No. 4 (add) (deduct)

\$ _____

Alternate No. 5 (add) (deduct)

\$ _____

Alternate No. 6 (add) (deduct)

\$ _____

The total contract price is

\$ _____

By _____

Owner

President

Attest:

Secretary

Date of Acceptance

Specifications

Special Telephone Equipment

The Specifications listed below can be attached and made a part of this Contract. (The Owner will check the applicable Specification.)

____ *RUS Form 397b, Trunk Carrier System Specifications*

____ *RUS Form 397c, Subscriber Carrier Specifications*

____ *RUS Form 397d, Design Specifications for Point-to-Point Microwave Radio Systems*

____ *RUS Form 397g, Performance Specifications for Line Concentrators*

____ *RUS Form 397h, Design Specifications for Digital Lightwave Transmission Systems*

[End of clause]

Dated: February 9, 1998.

Inga Smulkstys,

Acting Under Secretary, Rural Development.

[FR Doc. 98-4320 Filed 2-19-98; 8:45 am]

BILLING CODE 3410-15-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046-AA66

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission is proposing revisions to its federal sector complaint processing regulations to implement recommendations made by the Chairman's Federal Sector Workgroup. The Commission proposes to require that agencies establish or make available alternative dispute resolution (ADR) programs during the EEO pre-complaint process. The Commission proposes revisions to the counseling process, the bases for dismissal of complaints, and procedures for requesting a hearing. The Commission also proposes to provide administrative judges with the authority to issue dismissals and final decisions on complaints. The Commission proposes a number of changes to the class complaint procedures, including authorizing administrative judges to issue final decisions on class certification and requiring that administrative judges determine whether a settlement agreement is fair and reasonable. The Commission proposes changes to the appeals procedures to provide agencies the right to appeal an administrative judge's final decision, to revise the appellate briefing schedule, to establish different standards of review for agency final decisions and administrative judges' final decisions, and to revise the process for seeking reconsideration of a decision on appeal. Finally, the Commission proposes to amend the remedies section of the regulation to permit administrative judges to award attorney's fees and to provide for payment of attorney's fees for all services provided by an attorney throughout the equal employment opportunity (EEO) process, including counseling.

DATES: Comments on the notice of proposed rulemaking must be received on or before April 21, 1998.

ADDRESSES: Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile

("FAX") machine. The telephone number of the FAX receiver is (202) 663-4114. (This is not a toll free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4078 (voice) or (202) 663-4077 (TDD). (These are not toll free numbers.) Copies of comments submitted by the public will be available for review at the Commission's Library, room 6502, 1801 L Street, N.W., Washington, D.C. between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Kathleen Oram, Senior Attorney, Office of Legal Counsel, 202-663-4669 (voice), 202-663-7026 (TDD). This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publications Center at 1-800-669-3362.

SUPPLEMENTARY INFORMATION:

Introduction

As part of an ongoing effort to evaluate and improve the effectiveness of the Equal Employment Opportunity Commission's operations, the Chairman established the Federal Sector Workgroup to review the federal sector equal employment opportunity process. The Workgroup was composed of representatives from offices throughout the Commission. The Workgroup focused on the effectiveness of the EEOC in enforcing the statutes that prohibit workplace discrimination in the federal government, namely: section 717 of Title VII of the Civil Rights Act of 1964, which prohibits discrimination against applicants and employees based on race, color, religion, sex and national origin; section 501 of the Rehabilitation Act of 1973, which prohibits employment discrimination on the basis of disability; section 15 of the Age Discrimination in Employment Act, which prohibits employment discrimination based on age; and the Equal Pay Act, which prohibits sex-based wage discrimination.

The Workgroup's review evaluated the Commission's administrative processes governing its enforcement responsibilities in the federal sector and developed recommendations to improve