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(5) RUS Form 244, Rev. 12–55, Engineering Service Contract—Special Services. This form is used for miscellaneous engineering services.

(6) RUS Form 258, Rev. 4–58, Amendment of Engineering Service Contract—Additional Project. This form is used for amending engineering service contracts to add an additional project.

(7) RUS Form 284, Rev. 4–72, Final Statement of Cost for Architectural Service. This form is used for the closeout of architectural services contracts.

(8) RUS Form 297, Rev. 12–55, Engineering Service Contract—Retainer for Consultation Service. This form is used for engineering services for consultation service on a retainer basis.

(9) RUS Form 459, Rev. 9–58, Engineering Service Contract—Power Study. This form is used for engineering services for power studies.

[63 FR 58285, Oct. 30, 1998, as amended at 65 FR 63196, Oct. 23, 2000; 69 FR 52595, Aug. 27, 2004]

§§ 1724.75–1724.99 [Reserved]

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

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

SOURCE: 60 FR 10155, Feb. 23, 1995, unless otherwise noted.

Subpart A—General

§§ 1726.1–1726.9 [Reserved]

§ 1726.10 Introduction.

The policies, procedures and requirements included in this part are intended to implement provisions of the standard form of loan documents between the Rural Utilities Service (RUS) and its electric borrowers. Unless prior written approval is received from RUS, borrowers are required to comply with RUS policies and procedures as a condition to RUS providing loans, loan guarantees, or reimbursement of general funds for the construction and improvement of electric facilities. Requirements relating to RUS approval of plans and specifications, duties and responsibilities of the engineer and architect, and engineering and architectural services contracts, are contained in other RUS regulations. The terms ''RUS form'', ''RUS standard form'', ''RUS specification'', ''and RUS bulletin'' have the same meanings as the terms ''REA form'', ''REA standard form'', ''REA specification'', ''and REA bulletin'', respectively, unless otherwise noted.

§ 1726.11 Purpose.

Each borrower is responsible for the planning, design, construction, operation and maintenance of its electric system. RUS, as a secured lender, has a legitimate interest in accomplishing RUS's programmatic objectives, and in assuring that the costs of construction, materials, and equipment are reasonable and economical and that the property securing the loans is constructed adequately to serve the purposes for which it is intended.

§ 1726.12 Applicability.

The requirements of this part apply to the procurement of materials and equipment for use by electric borrowers in their electric systems and to the construction of their electric systems if such materials, equipment, and construction are financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects. In order for general fund expenditures for procurement or construction to be eligible for reimbursement from loan funds, the borrower must comply with the procedures required by this part. In the case of jointly owned projects, RUS will determine on a case by case basis the applicability of the requirements of this part.

§ 1726.13 Waivers.

The Administrator may waive, for good cause on a case by case basis, certain requirements and procedures of this part. RUS reserves the right, as a condition of providing loans, loan guarantees, or other assistance, to require any borrower to make any specification, contract, or contract amendment subject to the approval of the Administrator.

§ 1726.14 Definitions.

Terms used in this part have the meanings set forth in 7 CFR 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR 1710.2, the following terms have the following meanings for the purposes of this part:

Approval of proposed construction means RUS approval of a construction

work plan or other appropriate engineering study and RUS approval, for purposes of system financing, of the completion of all appropriate environmental review requirements in accordance with 7 CFR part 1970.

Architect means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

Bona fide bid means a bid which is submitted by a contractor on the borrower's list of qualified bidders for the specific contract, prior to bid opening.

''*Buy American*'' *certificate* means a certification that the contractor has complied with the ''Buy American'' requirement (see § 1726.15).

Competitive procurement means procurement of goods or services based on lowest evaluated bid for similar products or services when three or more bids are received.

Construction unit means a specifically defined portion of a construction project containing materials, labor, or both, for purposes of bidding and payment.

Contracting committee means the committee consisting of three to five members representing the borrower's management and board of directors and the engineer. The contracting committee represents the borrower during contract clarifying discussions or negotiations under informal competitive bidding or multiparty negotiation, respectively.

Encumbrance means the process of approval for advance of loans funds by RUS.

Engineer means a registered or licensed person, who may be a staff employee or an outside consultant, to provide engineering services and duly authorized assistants and representatives.

Equipment means a major component of an electric system, e.g., a substation transformer, heat exchanger or a transmission structure.

Force account construction means construction performed by the borrower's employees.

Formal competitive bidding means the competitive procurement procedure wherein bidders submit sealed proposals for furnishing the goods or services stipulated in the specification. Bids are publicly opened and read at a predetermined time and place. If a contract is awarded, it must be to the lowest evaluated responsive bidder (see § 1726.201).

Goods or services means materials, equipment, or construction, or any combination thereof.

Informal competitive bidding means the competitive procurement procedure which provides for private opening of bids and allows clarifying discussions between the contracting committee and the bidders. During the clarifying discussions any exceptions to the bid documents must be eliminated, or the bid rejected, so that the contract is awarded to the lowest evaluated responsive bidder (see § 1726.202).

Material means miscellaneous hardware which is combined with equipment to form an electric system, e.g., poles, insulators, or conductors.

Minor error or irregularity means a defect or variation in a 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. A minor error or irregularity is not an exception for purposes of determining whether a bid is responsive.

Minor modification or improvement means a project the cost of which is $250,000 or less, exclusive of the cost of owner furnished materials.

Multiparty lump sum quotations means the procurement of goods or services on a lump sum basis, based on the lowest evaluated offering, when three or more offers are received. (See § 1726.205).

Multiparty negotiation means the procurement procedure where three or more bids are received and provides for negotiations between the contracting committee and each bidder to determine the bid which is in the borrower's best interest (see § 1726.203).

Net utility plant (NUP) means Part C, Line 5 of RUS Form 7 for distribution borrowers or Section B, Line 5 of RUS Form 12a for power supply borrowers for the immediately preceding calendar year.

Procurement method means a procedure, including, but not limited to, those in subpart G of this part, that a borrower uses to obtain goods and services.

Owner furnished materials means materials or equipment or both supplied by the borrower for installation by the contractor.

Responsive bid means a bid with no exceptions or non-minor errors or irregularities on any technical requirement or in the contract terms and conditions.

RUS approval means written approval by the Administrator or a representative with delegated authority. RUS approval must be in writing, except in emergency situations where RUS approval may be given over the telephone followed by a confirming letter.

Unit prices means individual prices for specific construction units defined in accordance with RUS approved units specified in RUS standard contract forms.

[60 FR 10155, Feb. 23, 1995, as amended at 77 FR 3071, Jan. 23, 2012; 81 FR 11027, Mar. 2, 2016; 89 FR 17275, Mar. 11, 2024]

§ 1726.15 "Buy American".

The borrower must ensure that all materials and equipment financed with loans made or guaranteed by RUS complies with the ''Buy American'' provisions of the Rural Electrification Act of 1938 (7 U.S.C. 903 note), as amended by the North American Free Trade Agreement Implementation Act (107 Stat 2129). When a ''Buy American'' certificate is required by this part, this must be on RUS Form 213.

§ 1726.16 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension in connection with procurement activities set forth in 2 CFR part 180, as adopted by USDA through 2 CFR part 417, particularly with respect to lower tier transactions, *e.g.*, procurement contracts for goods or services.

[79 FR 76003, Dec. 19, 2014]

§ 1726.17 Restrictions on lobbying.

Borrowers are required to comply with certain restrictions and requirements in connection with procurement activities as set forth in 2 CFR part 418.

[79 FR 76003, Dec. 19, 2014]

§ 1726.18 Pre-loan contracting.

Borrowers must consult with RUS prior to entering into any contract for material, equipment, or construction if a construction work plan, general funds, loan or loan guarantee for the proposed work has not been approved. While the RUS staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all environmental review requirements in accordance with 7 CFR part 1970, have been met.

[81 FR 11027, Mar. 2, 2016]

§ 1726.19 Use of competitive procurement.

RUS borrowers' procurement is not subject to the provisions of the Federal Acquisition Regulation (48 CFR chapter 1); however, since borrowers receive the benefit of Federal financial assistance borrowers must use competitive procurement to the greatest extent practical. The borrower must use competitive procurement for obtaining all goods or services when a RUS loan or loan guarantee is involved except:

(a) As specifically provided for in subparts B through F of this part; or

(b) A waiver is granted.

§ 1726.20 Standards and specifications.

All materials, equipment, and construction must meet the minimum requirements of all applicable RUS standards and specifications. (See part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction, which is applicable regardless of the source of funding.)

[69 FR 7109, Feb. 13, 2004]

§ 1726.21 New materials.

The borrower shall purchase only new materials and equipment unless otherwise approved by RUS, on a case by case basis, prior to the purchase.

§ 1726.22 Methods of construction.

The borrower is generally responsible for determining whether construction will be by contract or force account. If construction is by contract, the borrower must determine whether materials will be supplied by the contractor or will be furnished by the borrower. RUS reserves the right to require contract construction in lieu of force account construction on a case by case basis.

§ 1726.23 Qualification of bidders.

(a) *Qualified bidder list (QBL).* The borrower shall (acting through its engineer, if applicable) review the qualifications of prospective bidders for contract construction and for material and equipment procurement, and select firms qualified for inclusion on the borrower's list of qualified bidders for each contract. (See also § 1726.16 and § 1726.17.) A bid may not be solicited from a prospective bidder or opened by the borrower unless that bidder has been determined to be a qualified bidder for the contract. When preparing the QBL, in addition to the actual experience of the borrower, if any, in dealing with a prospective bidder, the borrower may solicit information from that bidder or from other parties with firsthand experience regarding the firm's capabilities and experience. It is also important to consider the firm's performance record, safety record, and similar factors in determining whether to include that firm on the QBL, since the borrower may not evaluate these factors when evaluating a bid from a qualified and invited bidder.

(b) *Conflict of interest.* If there is a relationship between the borrower or engineer and a prospective bidder which might cause the borrower or engineer to have or appear to have a conflict of interest, that prospective bidder shall not be included on the QBL unless the engineer discloses the nature of the relationship to the borrower. In the case of the borrower, if its employees or directors have a relationship with a prospective bidder, the prospective bidder shall not be included on the qualified bidders list unless the nature of the relationship is disclosed to the board of directors, and the board of directors specifically approves the inclusion of that bidder in light of the potential for a conflict of interest.

§ 1726.24 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and the borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. This part implements these provisions of the RUS loan agreement. Subparts A through H and J of this part prescribe when and how borrowers are required to use RUS standard forms of contracts in procurement and construction. Subpart I of this part prescribes the procedures that RUS follows in promulgating standard contract forms and identifies those contract forms that borrowers are required to use for procurement and construction.

(b) *Amendments to contracts*—(1) *Contract forms.* The borrower must use RUS Form 238, Construction or Equipment Contract Amendment, for any change or addition in any contract for construction or equipment.

(2) *Special considerations.* Each time an amendment to a construction contract is executed, the borrower must ensure that contractor's bond is adequate, that all necessary licenses and permits have been obtained, and that any environmental requirements associated with the proposed construction have been met.

(3) *Amendment approval requirements.* (i) If a RUS approved form of contract is required by this part, an amendment must not alter the terms and conditions of the RUS approved form of contract without prior RUS approval.

(ii) The borrower must make a contract amendment subject to RUS approval if the underlying contract was made subject to RUS approval and the total amended contract price exceeds 120 percent of the original contract price (excluding any escalation provision contained in the contract).

(iii) Contract amendments, except as provided in paragraph (b)(3)(ii) of this

section, 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 63 FR 58286, Oct. 30, 1998; 69 FR 7109, Feb. 13, 2004]

§ 1726.25 Subcontracts.

Subcontracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[69 FR 7109, Feb. 13, 2004]

§ 1726.26 Interest on overdue accounts.

Certain RUS contract forms contain a provision concerning payment of interest on overdue accounts. Prior to issuing the invitation to bidders, the borrower must insert an interest rate equal to the lowest ''Prime Rate'' listed in the ''Money Rates'' section of the Wall Street Journal on the date such invitation to bid is issued. If no prime rate is published on that date, the last such rate published prior to that date must be used. The rate must not, however, exceed the maximum rate allowed by any applicable state law.

[63 FR 58286, Oct. 30, 1998]

§ 1726.27 Contractor's bonds.

(a) RUS Form 168b, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(b) RUS Form 168c, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for $1 million or less.

(c) Surety companies providing contractor's bonds shall be listed as acceptable sureties in the U.S. Department of the Treasury Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. Copies of the circular and interim changes may be obtained directly from the Government Printing Office (202) 512–1800. Interim changes are published in the FEDERAL REGISTER as they occur. The list is also available through the Internet at *http://www.fms.treas.gov/c570/index.html* and on the Department of the Treasury's computerized public bulletin board at (202) 874–6887.

[63 FR 58286, Oct. 30, 1998, as amended at 69 FR 7109, Feb. 13, 2004]

§§ 1726.28–1726.34 [Reserved]

§ 1726.35 Submission of documents to RUS.

(a) *Where to send documents.* Documents required to be submitted to RUS under this part are to be sent electronically to RUS, unless otherwise directed.

(b) *Borrower certification.* When a borrower certification is required by this part, it must be made by the borrower's manager unless the board of directors specifically authorizes another person to make the required certification. In such case, a certified copy of the specific authorizing resolution must accompany the document or be on file with RUS.

(c) *Contracts requiring RUS approval.* The borrower shall submit to RUS, one copy of each contract that is subject to RUS approval under subparts B through F of this part. Any contract submitted by the borrower contract must be accompanied by:

(1) A bid tabulation and evaluation and, if applicable, a written recommendation of the architect or engineer.

(2) For awards made under the informal competitive bidding procedure or the multiparty negotiation procedure, a written recommendation of the contracting committee (See §§ 1726.202 and 1726.203).

(3) One copy of an executed contractor's bond on RUS approved bond forms as required in the contract form and one copy of the bid bond or copy of the certified check.

(4) A certification by the borrower or chairperson of the contracting committee, as applicable, that the appropriate bidding procedures were followed as required by this part.

(5) Evidence of clear title to the site for substations and headquarters construction contracts, if not previously submitted.

(6) Documentation that all reasonable measures were taken to assure competition if fewer than three bids were received.

(d) *Contract amendments requiring RUS approval.* The borrower must submit to RUS, one copy of each contract amendment which is subject to RUS approval under §1726.24(b). Each contract amendment submittal to RUS must be accompanied by a bond extension, where necessary.

(e) *Encumbrance of loan or loan guarantee funds.* (1) For contracts subject to RUS approval, the submittals required under paragraph (c) of this section will initiate RUS action to encumber loan or loan guarantee funds for such contracts.

(2) For contracts not subject to RUS approval (except for generation projects), loan or loan guarantee funds will normally be encumbered using RUS Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can show good cause for a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed contract, provided it meets all applicable RUS requirements.

(3) For generation project contracts not subject to RUS approval, the borrower must submit to RUS the following documentation:

(i) A brief description of the scope of the contract, including contract identification (name, number, etc.);

(ii) Contract date;

(iii) Contractor's name;

(iv) Contract amount;

(v) Bidding procedure used;

(vi) Borrower certification that:

(A) The bidding procedures and contract award for each contract were in conformance with the requirements of Part 1726, Electric System Construction Policies and Procedures;

(B) If a RUS approved form of contract is required by this part, the terms and conditions of the RUS approved form of contract have not been altered;

(C) If RUS has approved plans and specifications for the contract, the contract was awarded on the basis of those plans and specifications; and

(D) No restriction has been placed on the borrower's right to assign the contract to RUS or its successors.

(4) *Contract amendments.* (i) For amendments subject to RUS approval, the submittals required under paragraph (c) of this section will initiate RUS action to encumber loan or loan guarantee funds for contract amendments requiring RUS approval.

(ii) For amendments not subject to RUS approval (except generation projects), loan or loan guarantee funds will normally be encumbered using RUS Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can justify a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed amendment, providing it meets all applicable RUS requirements.

(iii) For each generation project contract amendment not subject to RUS approval, the borrower must submit to RUS the following information and documentation:

(A) The contract name and number;

(B) The amendment number;

(C) The amendment date;

(D) The dollar amount of the increase or the decrease of the amendment;

(E) Borrower certification that:

(*1*) The amendment was approved in accordance with the policy of the board of directors;

(*2*) If a RUS approved form of contract is required by this part, the terms and conditions of the RUS approved form of contract has not been altered; and

(*3*) No restriction has been placed on the borrower's right to assign the contract to RUS or its successors.

[60 FR 10155, Feb. 23, 1995, as amended at 84 FR 32617, July 9, 2019; 86 FR 36197, July 9, 2021]

§1726.36 Documents subject to RUS approval.

Unless otherwise indicated, the borrower shall make all contracts and amendments that are subject to RUS

approval effective only upon RUS approval.

§ 1726.37 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 0572–0107.

§§ 1726.38–1726.49 [Reserved]

Subpart B—Distribution Facilities

§ 1726.50 Distribution line materials and equipment.

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is more than $1,000,000.

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order equal to $1,000,000 or less for purchases of equipment, and for all materials.

(b) *Standards and specifications.* Distribution line materials and equipment must meet the minimum requirements of RUS standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain RUS approval prior to purchasing any unlisted distribution line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for the purchase of material and equipment to be used in distribution line construction.

(d) *Contract approval.* Contracts for purchases of distribution line materials and equipment 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; 77 FR 3072, Jan. 23, 2012]

§ 1726.51 Distribution line construction.

(a) *Contract forms.* The borrower must use RUS Form 790, or 830, as outlined in this paragraph (a), for distribution line construction, except for minor modifications or improvements.

(1) The borrower may use RUS Form 790, Electric System Construction Contract—Non-Site Specific Construction, under the following circumstances:

(i) For contracts for which the borrower supplies all materials and equipment; or

(ii) For non-site specific construction contracts accounted for under the work order procedure; or

(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use RUS Form 790 for contracts, up to a cumulative total of $500,000 or one percent of net utility plant (NUP), whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.

(2) The borrower must use RUS Form 830, Electric System Construction Contract—Project Construction, for all other distribution line construction.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of $1,000,000 or four percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment. Borrowers may award Cost-Plus/Hourly contracts as part of these borrower responsibility limits up to a cumulative total of $500,000 or two percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(2) The borrower shall use formal competitive bidding for all other distribution line contract construction unless the RUS specifically approves an alternative method. The dollar amounts of contracts bid using the formal competitive bidding procedure do not apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(3) An amendment which increases the scope of the contract by adding a project is not considered competitively bid, therefore, the dollar amount of that amendment does apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(c) *Contract approval.* Contracts for distribution line construction 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; 77 FR 3072, Jan. 23, 2012; 86 FR 36198, July 9, 2021; 89 FR 17275, Mar. 11, 2024]

§§ 1726.52–1726.74 [Reserved]

Subpart C—Substation and Transmission Facilities

§ 1726.75 General.

As used in this part, ''substations'' includes substations, switching stations, metering points, and similar facilities.

§ 1726.76 Substation and transmission line materials and equipment.

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is $1,000,000 or more.

(2) The borrower may, in its discretion, use RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $1,000,000 and for all materials.

(b) *Standards and specifications.* Substation and transmission line materials and equipment must meet the minimum requirements of RUS standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain RUS approval prior to purchasing of any unlisted substation or transmission line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for purchase of material and equipment to be used in substation and transmission line construction.

(d) *Contract approval.* Contracts for purchases of substation and transmission line materials and equipment 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; 77 FR 3072, Jan. 23, 2012]

§ 1726.77 Substation and transmission line construction.

(a) *Contract forms.* The borrower must use RUS Form 830, Electric System Construction Contract—Project Construction, for construction of substations, except for minor modifications or improvements.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of $1,000,000 or four percent of NUP, whichever is greater, per calendar year of substation and transmission line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment. Borrowers may award Cost-Plus/Hourly contracts as part of these borrower responsibility limits up to a cumulative total of $500,000 or two percent of NUP, whichever is greater, per calendar year of substation and transmission line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(2) The borrower shall use formal competitive bidding for all other contract construction unless RUS specifically approves an alternative method. The dollar amount of contracts bid using the formal competitive bidding procedure do not apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(3) An amendment which increases the scope of the contract by adding a project is not considered competitively bid, therefore, the dollar amount of

that amendment does apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(c) *Contract approval.* Individual contracts in the amount of $1,000,000 or more or four percent of NUP, 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 69 FR 7109, Feb. 13, 2004; 77 FR 3072, Jan. 23, 2012; 86 FR 36198, July 9, 2021; 89 FR 17275, Mar. 11, 2024]

§§ 1726.78–1726.124 [Reserved]

Subpart D—Generation Facilities

§ 1726.125 Generating plant facilities.

This section covers the construction of all portions of a generating plant, including plant buildings and the generator step-up transformer. Generally, the transmission switchyard will be covered under this section during initial construction of the plant. Subpart C of this part covers subsequent modifications to transmission switchyards. Warehouses and equipment service type buildings are covered under subpart E of this part.

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for the purchase of generating plant equipment in the amount of $5,000,000 or more and for any generating plant equipment contract requiring RUS approval.

(2) The borrower shall use RUS Form 200, Construction Contract—Generating, for generating project construction contracts in the amount of $5,000,000 or more and for any generating project construction contract requiring RUS approval.

(3) The borrower may, in its discretion, use other contract forms or written purchase order forms for those contracts in amounts of less than $5,000,000 and that do not require RUS approval.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of less than $5,000,000 each.

(2) If the amount of the contract is $5,000,000 or more or if the contract requires RUS approval, the borrower must use formal or informal competitive bidding to award the contract.

(3) Where formal or informal competitive bidding is not applicable, or does not result in a responsive bid, multiparty negotiation may be used only after RUS approval is obtained.

(c) *Contract approval.* During the early stages of generating plant design or project design, RUS will, in consultation with the borrower and its consulting engineer, identify the specific contracts which require RUS approval based on information supplied in the plant design manual. The following are typical contracts for each type of generating project which will require RUS approval. Although engineering services are not covered by this part, they are listed in this paragraph to emphasize that RUS approval is required for all major generating station engineering service contracts in accordance with applicable RUS rules. For types of projects not shown, such as nuclear and alternate energy projects, RUS will identify the specific contracts which will require RUS approval on a case-by-case basis.

(1) *Fossil generating stations.* Engineering services, steam generator, turbine generator, flue gas desulfurization system, particulate removal system, electric wiring and control systems, mechanical equipment installation (including turbine installation and plant piping), power plant building (foundation and superstructure), site preparation, coal unloading and handling facilities, main step-up substation, cooling towers, and dams or reservoirs.

(2) *Diesel and combustion turbine plants.* Engineering services, prime mover and generator, building (foundation and superstructure), and electrical control systems.

(3) *Hydro installations.* Engineering services, turbine/generator, civil works and powerhouse construction, electrical control system, and mechanical installation.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7109, Feb. 13, 2004; 77 FR 3072, Jan. 23, 2012; 89 FR 17275, Mar. 11, 2024]

§§ 1726.126–1726.149 [Reserved]

Subpart E—Buildings

§ 1726.150 Headquarters buildings.

This section includes headquarters buildings such as warehouses and equipment service type buildings. Generating plant buildings are covered under subpart D of this part.

(a) *Contract forms.* The borrower must use RUS Form 257, Contract to Construct Buildings, for all contracts for construction of new headquarters facilities, and additions to, or modifications of existing headquarters facilities (except for minor modifications or improvements).

(b) *Procurement procedures.* A borrower may use Multiparty Lump Sum Quotations to award contracts in amounts of up to a cumulative total of $1,500,000 or four percent of NUP, whichever is greater, per calendar year of headquarters construction (including minor modifications or improvements). The borrower shall use formal competitive bidding for all other headquarters contract construction unless RUS specifically approves an alternative method.

(c) *Contract approval.* Contracts for headquarters construction 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 77 FR 3072, Jan. 23, 2012; 86 FR 36198, July 9, 2021; 89 FR 17275, Mar. 11, 2024]

§§ 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, fiber, power line carrier, and other communications technologies or systems, including load control and supervisory control and data acquisition (SCADA) systems, automated meter reading/automated metering infrastructure (AMR/AMI), or other smart grid technologies. 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 $1,000,000 or four percent of NUP, 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 $1,000,000 or more or four percent of NUP, 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; 86 FR 36198, July 9, 2021; 89 FR 17275, Mar. 11, 2024]

§§ 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 representative 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 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 generation 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 [Reserved]

§ 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:

''Proposals are invited on the basis of firm prices (or prices with a stated maximum percentage escalation) or on the basis of nonfirm prices to be adjusted as provided for below or on both bases. The owner may award the contract on either basis.

Nonfirm prices. The prices are subject to adjustment upward or downward based on change in the Bureau of Labor Statistics labor and material indexes.

A proportion of ____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent labor cost and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate____ [the borrower will enter the appropriate BLS index] from the month in which the bids are opened to the month in which the labor is incorporated in the equipment or materials. The adjustment for labor costs shall be obtained by applying the percentage of increase or decrease in such index, calculated to the nearest one-tenth of one percent, to the percentage of the contract prices deemed to represent labor costs. A portion of ____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent material costs and shall be adjusted based on changes in the Bureau of Labor Statistics, material index ____ [the borrower will enter the appropriate BLS index] for the period and in a manner similar to the labor cost adjustment.''

(2) Insert the following in the contract documents under the ''Proposal'' section:

''Firm Price $_____
Nonfirm Price $_____''

(3) For equipment that uses a large quantity of insulating oil, the borrower may insert the following in the contract documents under the ''Proposal'' section:

''The price for insulating oil shall be adjusted upward or downward based on the change in the Bureau of Labor Statistics Refined Petroleum Rate (057) from the month in which the bids are opened to the month in which the oil is purchased by the equipment supplier. Contracts shall be evaluated based on an estimated cost of ____ cents per gallon [the borrower will enter the appropriate cost] for oil. Such adjustment, if any, shall not change the contract amount for purpose of applying any other adjustments to the contract prices.''

(c) *Construction contracts.* The approved provisions needed to reflect the modifications to provide for price escalation in the construction contract forms for generation facilities are as follows:

(1) Insert new paragraphs in the ''Notice and Instructions'' to Bidders as follows:

''Proposals are invited on the basis of firm prices (or prices with a stated maximum percentage escalation) or on the basis of nonfirm prices to be adjusted as provided for below or on both bases. The owner may award the contract on either basis.

Nonfirm Prices—The prices are subject to adjustment upward or downward based on changes in the Bureau of Labor Statistics labor and material indexes.

A proportion of ____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent shop labor costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate ____ [the borrower will enter the appropriate BLS index] from the month in which bids are opened to the month in which the work is accomplished. The adjustment for shop labor costs shall be obtained

by applying the percentage increase or decrease in such index, to the percentage of each partial payment deemed to represent shop labor costs. A portion of ____ percent [the borrower will enter the appropriate percentage amount] of the contract prices shall be deemed to represent material costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Producer Price Index, ____ [the borrower will enter the appropriate BLS index] for the period and in a manner similar to the shop labor costs adjustment. A portion of ____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent field labor costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate ____ [the borrower will enter the appropriate BLS index], for the period and in a manner similar to the shop labor costs adjustment.''

(2) Insert the following in the contract documents under the ''Proposal'' section:

''Firm Price $_____
Nonfirm Price $_____''

§ 1726.252 Prior approved contract modification related to liability for special and consequential damages.

This section applies only to transmission equipment purchases and generation contracts. Where the borrower anticipates difficulty in obtaining responsive bids on RUS standard contract forms due to a lack of limitation with respect to special and consequential damages, and where the borrower believes that such a modification will encourage competition through the receipt of an alternative bid which limits the bidder's liability for special and consequential damages, the borrower may make the following approved phrase modifications in the RUS standard contract form on which the borrower solicits bids:

(a) Insert new paragraphs in the ''Notice and Instructions to Bidders'' as follows:

''Proposals are invited on the basis of alternative Liability Clause Numbers 1 and 2. The Owner will determine on which Liability Clause basis the award will be made. Any other liability clauses in the proposal or any other modifications will be considered not responsive and unacceptable. These Liability Clauses are defined as follows:

Liability Clause Number 1. This will include unmodified all of the standard terms and conditions of the form of contract furnished by the Owner and attached hereto.

Liability Clause Number 2. This will include the following paragraph, in addition to all of the standard terms and conditions, otherwise unmodified, of the form of contract furnished by the Owner and attached hereto:

''Except for the Bidder's willful delay or refusal to perform the contract in accordance with its terms, the Bidder's liability to the Owner for special or consequential damages on account of breach of this contract shall not exceed in total an amount equal to ____ percent [the borrower will insert an appropriate percentage between 0 and 100 percent, inclusive] of the contract price.''

(b) Insert the following in the contract documents under the ''Proposal'' section:

''Price $(Based on Liability Clause 1)_____
Price $(Based on Liability Clause 2)_____''

(c) Insert the following in the acceptance section of the standard contract form:

''This contract is based on Liability Clause Number_____.''

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

§ 1726.253 Prior approved contract modification related to alternative bid provision for payment to contractor for bulk purchase of materials.

When construction is to be performed over an extended period of time, but large quantities of material are to be purchased by the contractor at the beginning of the project (e.g., cable for URD installations), the borrower may allow alternative bids providing for payment to the contractor of 90 percent of the cost of such materials within 30 days of delivery of those materials at the job site. The borrower will retain the right to award the contract with or without the alternative payment provision, however, the contract still must be awarded on the basis of the lowest evaluated responsive bid for the alternative accepted.

§ 1726.254 [Reserved]

§ 1726.255 Prior approved contract modifications related to indemnification.

(a) As an alternative to the indemnification provision required in RUS standard construction contract forms in those jurisdictions requiring specific language concerning the requirement that the indemnitor indemnify the indemnitee for the indemnitee's own negligence, the borrower may add the words ''otherwise this provision shall apply to any alleged negligence or condition caused by the Owner'' so that the first paragraph reads as follows:

''i. To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner, otherwise this provision shall apply to any negligence or condition caused by the Owner.''

(b) As an alternative to the indemnification provision required in RUS standard construction contract forms in those jurisdictions that have a legal prohibition against one party indemnifying another for the other's negligence, the borrower may replace the words ''defend, indemnify, and hold harmless'' with the words '' shall pay on behalf of'' so that the first paragraph reads as follows:

''i. To the maximum extent permitted by law, Bidder shall pay on behalf of Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner, otherwise this provision shall apply to any negligence or condition caused by the Owner.''

(c) If the alternative indemnification provision in paragraph (a) or (b) of this section is chosen by the borrower, the language of paragraph (a) or (b) of this section would be inserted in lieu of paragraph (i) of the section indicated in the RUS standard construction contract forms as follows:

(1) RUS Form 198, Equipment Contract, article IV, section 1(d).

(2) RUS Form 200, Construction Contract—Generating, article IV, section 1(d).

(3) RUS Form 257, Contract to Construct Buildings, article IV, section 1(d).

(4) RUS Form 786, Electric System Communications and Control Equipment Contract, article IV, section 1(d).

(5) RUS Form 790, Electric System Construction Contract—Non-Site Specific Construction, article IV, section 1(g).

(6) RUS Form 830, Electric System Construction Contract—Project Construction, article IV, section 1(g).

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7110, Feb. 13, 2004]

§§ 1726.256–1726.299 [Reserved]

Subpart I—RUS Standard Forms

§ 1726.300 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and its borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contract promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. (See section 5.16 of appendix A to subpart C of part 1718 of this chapter.) This subpart prescribes RUS procedures in promulgating standard contract forms and identifies those

forms that borrowers are required to use.

(b) *Contract forms.* RUS promulgates standard contract forms, identified in the List of Required Contract Forms, §1726.304(c), that borrowers are required to use in accordance with the provisions of this part. In addition, RUS promulgates standard contract forms contained in §1726.304(d) that the borrowers may but are not required to use in the construction of their electric systems. Borrowers are not required to use these guidance contract forms in the absence of an agreement to do so.

[63 FR 58286, Oct. 30, 1998]

§ 1726.301 Borrower contractual obligations.

(a) *Loan agreement.* As a condition of a loan or loan guarantee under the Rural Electrification Act, borrowers are normally required to enter into RUS loan agreements pursuant to which the borrower agrees to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. Normally, this obligation is contained in section 5.16 of the loan contract. To comply with the provisions of the loan agreements as implemented by this part, borrowers must use those forms of contract (hereinafter sometimes called ''listed contract forms'') identified in the List of Required Contract Forms, §1724.304(c).

(b) *Compliance.* If a borrower is required by this part or by its loan agreement with RUS to use a listed standard form of contract, the borrower shall use the listed contract form in the format available from RUS, either paper or electronic format. Exact electronic reproduction is acceptable. The approved RUS standard forms of contract shall not be retyped, changed, modified, or altered in any manner not specifically authorized in this part or approved by RUS in writing on a case-by-case basis. Any modifications approved by RUS on a case-by-case basis must be clearly shown so as to indicate the modification difference from the standard form of contract.

(c) *Amendment.* Where a borrower has entered into a contract in the form required by this part, no change may be made in the terms of the contract, by amendment, waiver or otherwise, without the prior written approval of RUS.

(d) *Waiver.* RUS may waive for good cause, on a case by case basis, the requirements imposed on a borrower pursuant to this part. Borrowers seeking a waiver by RUS must provide RUS with a written request explaining the need for the waiver. Waiver requests should be made prior to issuing the bid package to bidders.

(e) *Violations.* A failure on the part of the borrower to use listed contracts as prescribed in this part is a violation of the terms of its loan agreement with RUS and RUS may exercise any and all remedies available under the terms of the agreement or otherwise.

[63 FR 58286, Oct. 30, 1998, as amended at 69 FR 7110, Feb. 13, 2004]

§ 1726.302 Notice and publication of listed contract forms.

(a) *Notice.* Upon initially entering into a loan agreement with RUS, borrowers will be provided with all listed contract forms. Thereafter, new or revised listed contract forms promulgated by RUS, including RUS approved exceptions and alternatives, will be sent by regular or electronic mail to the address of the borrower as identified in its loan agreement with RUS.

(b) *Availability.* Listed standard forms of contract are available from: Rural Utilities Service, Program Development and Regulatory Analysis, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW., Washington DC 20250–1522, telephone number (202) 720–8674. The listed standard forms of contract are also available on the RUS Web site at: *http://www.usda.gov/rus/electric/forms/index.htm.* The listed standard forms of contract can be found in §1724.304(c), List of Required Contract Forms.

[63 FR 58287, Oct. 30, 1998, as amended at 69 FR 7110, Feb. 13, 2004]

§ 1726.303 Promulgation of new or revised contract forms.

RUS may, from time to time, undertake to promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS shall publish notice of rulemaking in the FEDERAL REGISTER announcing, as appropriate, a

revision in, or a proposal to amend §1726.304, List of Electric Program Standard Contract Forms. The amendment may change the existing identification of a listed contract form; for example, changing the issuance date of a listed contract form or by identifying a new required contract form. The notice of rulemaking will describe the new standard contract form or the substantive change in the listed contract form, as the case may be, and the issues involved. The standard contract form or relevant portions thereof may be appended to the supplementary information section of the notice of rulemaking. As appropriate, the document shall provide an opportunity for interested persons to provide comments. A copy of each such FEDERAL REGISTER document will be sent by regular or electronic mail to all borrowers.

[63 FR 58287, Oct. 30, 1998]

§ 1726.304 List of electric program standard contract forms.

(a) *General.* This section contains a list of RUS electric program standard contract forms. Paragraph (c) of this section contains the list of required contract forms, *i.e.*, those forms of contracts that borrowers are required to use by the terms of their RUS loan agreements as implemented by the provisions of this part. Paragraph (d) of this section sets forth the list of guidance contract forms, i.e., those forms of contracts provided as guidance to borrowers in the construction of their systems. See §1726.302(b) for availability of these forms.

(b) *Issuance date.* Where required by this part to use a standard form of contract in connection with RUS financing, the borrower shall use that form identified by issuance date in the List of Required Contract Forms in paragraph (c) of this section, as most recently published as of the date the borrower issues the bid package to bidders.

(c) List of required contract forms.

(1) RUS Form 168b, Rev. 2–04, Contractor's Bond. This form is used to obtain a surety bond and is used with RUS Forms 200, 257, 786, 790, and 830.

(2) RUS Form 168c, Rev. 2–04, Contractor's Bond (less than $1 million). This form is used in lieu of RUS Form 168b to obtain a surety bond when contractor's surety has accepted a Small Business Administration guarantee.

(3) RUS Form 187, Rev. 2–04, Certificate of Completion, Contract Construction. This form is used for the closeout of RUS Forms 200, 257, 786, and 830.

(4) RUS Form 198, Rev. 4–04, Equipment Contract. This form is used for equipment purchases.

(5) RUS Form 200, Rev. 2–04, Construction Contract—Generating. This form is used for generating plant construction or for the furnishing and installation of major items of equipment.

(6) RUS Form 213, Rev. 2–04, Certificate (''Buy American''). This form is used to document compliance with the ''Buy American'' requirement.

(7) RUS Form 224, Rev. 2–04, Waiver and Release of Lien. This form is used for the closeout of RUS Forms 198, 200, 257, 786, 790, and 830.

(8) RUS Form 231, Rev. 2–04, Certificate of Contractor. This form is used for the closeout of RUS Forms 198, 200, 257, 786, 790, and 830.

(9) RUS Form 238, Rev. 2–04, Construction or Equipment Contract Amendment. This form is used for amendments.

(10) RUS Form 254, Rev. 2–04, Construction Inventory. This form is used for the closeout of RUS Form 830. Minor electronic modifications are acceptable for RUS Form 254.

(11) RUS Form 257, Rev. 2–04, Contract to Construct Buildings. This form is used to construct headquarters buildings and other structure construction.

(12) RUS Form 307, Rev. 2–04, Bid Bond. This form is used to obtain a bid bond.

(13) RUS Form 786, Rev. 2–04, Electric System Communications and Control Equipment Contract (including installation). This form is used for delivery and installation of equipment for system communications.

(14) RUS Form 790, Rev. 2–04, Electric System Construction Contract—Non-Site Specific Construction. This form is used for limited distribution construction accounted for under work order procedure.

(15) RUS Form 792b, Rev. 2–04, Certificate of Construction and Indemnity

Agreement. This form is used for the closeout of RUS Form 790.

(16) RUS Form 830, Rev. 2–04, Electric System Construction Contract—Project Construction. This form is used for distribution and transmission line project construction.

(d) List of guidance contract forms. RUS does not currently publish any guidance forms for electric borrowers.

[63 FR 58287, Oct. 30, 1998, as amended at 69 FR 7110, Feb. 13, 2004; 69 FR 52595, Aug. 27, 2004]

§§ 1726.305–1726.399 [Reserved]

Subpart J—Contract Closeout

§ 1726.400 Final contract amendment.

As needed, a final contract amendment will be prepared and processed in accordance with § 1726.24(b) prior to or in conjunction with the closeout of the contract.

§ 1726.401 Material contract closeout.

(a) *Delivery inspection.* The borrower (acting through its engineer, if applicable) will verify that all materials are delivered in proper quantities, in good condition, and in compliance with applicable specifications.

(b) *Closeout documents.* The borrower (acting through its engineer, if applicable) will obtain from the supplier a ''Buy American'' certificate, RUS Form 213, any manufacturer's guarantee(s) and, if applicable, a copy of RUS Form 224, Waiver and Release of Lien. Closeout documents for materials contracts need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(c) *Final payment.* Upon completion of the actions required under paragraphs (a) and (b) of this section, the borrower shall make final payment to the supplier in accordance with the provisions of the material contract or written purchase order.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7110, Feb. 13, 2004]

§ 1726.402 Equipment contract closeout.

This section is applicable to contracts executed on RUS Form 198.

(a) *Final inspection and testing of equipment.* The borrower (acting through its engineer, if applicable) will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower (acting through its engineer, if applicable) will schedule such inspection and testing at a time mutually agreeable to the borrower, engineer, and the supplier or manufacturer. Within thirty (30) days after completion of the inspection and testing, the borrower (acting through its engineer, if applicable) will prepare a report of the inspection and testing, obtain a copy of the report from the engineer, and submit a copy to the supplier or manufacturer. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from the engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by the engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Closeout documents.* (1) The borrower (acting through its engineer, if applicable) will obtain the following executed documents:

(i) Certification by the project engineer in accordance with paragraph (a) of this section.

(ii) All guarantees or warranties.

(iii) A ''Buy American'' certificate, RUS Form 213, from the supplier or manufacturer.

(2) Closeout documents for materials contracts need not be submitted to RUS unless specifically requested by RUS.

(c) *Final payment.* Upon completion of the actions required under paragraphs (a) and (b) of this section, the borrower will make final payment to the supplier or manufacturer in accordance with the provisions of the equipment contract.

§ 1726.403 Project construction contract closeout.

This section is applicable to contracts executed on RUS Forms 200, 257, 786, and 830.

(a) *Final test of equipment supplied under a construction contract.* If equipment is supplied under a construction contract, the borrower (acting through its architect or engineer, if applicable) will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower (acting through its architect or engineer, if applicable) will schedule such inspection and testing at a time mutually agreeable to the borrower, architect or engineer, and the contractor. Within thirty (30) days after completion of the inspection and testing, the borrower (acting through its architect or engineer, if applicable) will prepare a report of the inspection and testing, obtain a copy of the report from its architect or engineer, and submit a copy to the contractor. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from its architect or engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by its architect or engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Final inspection of construction.* The borrower will require the contractor to notify the architect or engineer when construction is complete. The borrower (acting through the architect or engineer, if applicable) will schedule such final inspection at a time mutually agreeable to the borrower, architect or engineer, contractor, and the respective RUS General Field Representative (GFR), if the GFR has notified the borrower or its architect or engineer of a desire to observe the final inspection. The borrower (acting through its architect or engineer, if applicable) will perform a final inspection of the construction and notify the contractor of any required changes or corrections.

(c) *Closeout documents.* (1) Upon satisfactory completion of construction (including all changes and corrections by the contractor), the borrower (acting through its architect or engineer, if applicable) will obtain executed copies of the following documents:

(i) RUS Form 187, Certificate of Completion, Contract Construction.

(ii) RUS Form 213, ''Buy American'' certificate.

(iii) RUS Form 224, Waiver and Release of Lien, from each manufacturer, supplier, and contractor which has furnished material or services or both in connection with the construction.

(iv) RUS Form 231, Certificate of Contractor.

(v) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a-c, construction change orders, and amendments for contracts executed on RUS Form 830.

(vi) Certification by the project architect or engineer in accordance with § 1726.403(a), if applicable.

(vii) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in paragraph (c)(1) of this section in accordance with applicable RUS requirements regarding retention of records.

(ii) For contracts subject to RUS approval, the borrower will submit either a certification or the following closeout documents for RUS approval:

(A) RUS Form 187, Certificate of Completion, Contract Construction.

(B) RUS Form 231, Certificate of Contractor.

(C) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a-c and construction change orders, for contracts executed on RUS Form 830.

(iii) For contracts not subject to RUS approval, the closeout is not subject to RUS approval. The borrower will send one copy of RUS Form 187 to RUS for information prior to or in conjunction

with the applicable RUS Form 219, Inventory of Work Orders. The remaining closeout documents need not be sent to RUS unless specifically requested by RUS.

(d) *Final payment.* (1) The borrower will make final payment to the contractor upon completion of approval of all closeout documents by the parties to the contract, in accordance with the terms of the construction contract.

(2)(i) Upon receipt of final payment by the contractor, the borrower will obtain from the contractor a certification of receipt of final payment in the following form:

''The undersigned acknowledges receipt of the final contract payment of $____ as satisfaction in full of all claims of the undersigned under the construction contract between the undersigned and ____ (borrower), dated as amended, and as complete performance by the latter of all obligations to be performed by it pursuant thereto. The total amount received under this contract is shown above.''

(ii) The certification in paragraph (d)(2)(i) of this section is to be executed for the contractor by: The sole owner, a partner, or an officer of the corporation.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7110, Feb. 13, 2004; 84 FR 32618, July 9, 2019; 86 FR 36198, July 9, 2021]

§ 1726.404 Non-site specific construction contract closeout.

This section is applicable to contracts executed on RUS Form 790.

(a) *Final test of equipment supplied under a construction contract.* If equipment is supplied under a construction contract, the borrower (acting through its engineer, if applicable) will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower (acting through its engineer, if applicable) will schedule such inspection and testing at a time mutually agreeable to the borrower, its engineer, and the contractor. Within thirty (30) days after completion of the inspection and testing, the borrower (acting through its engineer, if applicable) will prepare a report of the inspection and testing, obtain a copy of the report from its engineer, and submit a copy to the contractor. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from the engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by the engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Final inspection of construction.* The borrower will require the contractor to notify its engineer when construction of a section of the project is complete. The borrower (acting through its engineer, if applicable) will schedule such final inspection at a time mutually agreeable to the borrower, its engineer, contractor, and the respective GFR, if the GFR has notified the borrower or its engineer of a desire to observe the final inspection. The borrower (acting through its engineer, if applicable) will perform a final inspection of the construction of that section of the project and notify the contractor of any required changes or corrections.

(c) *Closeout documents.* (1) Upon satisfactory completion of construction of a section of the project (including all changes and corrections by the contractor), the borrower (acting through its engineer, if applicable) will obtain executed copies of the following documents:

(i) RUS Form 792b, Certificate of Contractor and Indemnity Agreement

(ii) RUS Form 213, ''Buy American'' certificate.

(iii) Certification by the project engineer in accordance with paragraph (a) of this section, if applicable.

(iv) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in

paragraph (c)(1) of this section in accordance with applicable RUS requirements regarding retention of records.

(ii) For contracts not subject to RUS approval, the closeout is not subject to RUS approval and the closeout documents need not be sent to RUS unless specifically requested by RUS.

[60 FR 10155, Feb. 23, 1995, as amended at 69 FR 7111, Feb. 13, 2004]

§ 1726.405 Inventory of work orders (RUS Form 219).

Upon completion of the contract closeout, the borrower shall complete RUS Form 219, Inventory of Work Orders, in accordance with part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, of this chapter.

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

Sec.

1728.10 General purpose and scope.
1728.20 Establishment of standards and specifications.
1728.30 Inclusion of an item for listing or technical acceptance.
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1728.98 Electric standards and specifications.
1728.201 Bulletin 1728H–701, Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys.
1728.202 Bulletin 1728H–702, Specification for Quality Control and Inspection of Timber Products.
1728.203 Inspector's qualifications.
1728.204 Electric standards and specifications for materials and construction.

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

SOURCE: 48 FR 31853, July 12, 1983, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

§ 1728.10 General purpose and scope.

(a) The requirements of this part are based on contractual provisions between RUS and the organizations which receive financial assistance from RUS.

(b) RUS will establish certain specifications and standards for materials, equipment, and construction units that will be acceptable for RUS financial assistance for the electric program. Materials and equipment purchased by the electric borrowers or accepted as contractor-furnished material must conform to RUS standards and specifications where they have been established and, if included in RUS Bulletin 43–5, ''List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers'' (List of Materials), must be selected from that list or must have received technical acceptance from RUS. RUS, through its Technical Standards Committees, will evaluate certain materials, equipment and construction units, and will determine acceptance.

[50 FR 47710, Nov. 20, 1985. Redesignated at 55 FR 39395, Sept. 27, 1990]

§ 1728.20 Establishment of standards and specifications.

(a) *National and other standards.* RUS will utilize standards of national standardizing groups, such as the American National Standards Institute (ANSI), American Wood Preservers' Association (AWPA), the various national engineering societies and the National Electrical Safety Code (NESC), to the greatest extent practical. When there are no national standards or when RUS determines that the existing national standards are not adequate for rural electric systems, RUS will prepare standards for material and equipment to be used on systems of electric borrowers. RUS standards and specifications will be codified or listed in §1728.97, Incorporation by Reference of Electric Standards and Specifications. RUS will also prepare specifications for materials and equipment when it determines that such specifications will result in reduced costs, improved materials and equipment, or in the more effective use of engineering services.

(b) *Deviations from Standards.* No member of the RUS staff will be permitted to authorize deviations from the standard specifications, or to establish or change the technical standards, or to authorize the use of items that have not received acceptance by