

§ 1753.6

(b) *Contract construction.* (1) RUS approval of the borrower's award of the contract is not required if the contractor is selected through sealed competitive bidding, the bid amount is \$500,000 or less and the contractor is not a company or organization affiliated with the borrower. This does not relieve the borrower of the requirements of bidding or bid evaluation set contained in this part.

(2) RUS approval of the borrower's award of the contract is required for all other competitively-bid and for negotiated major construction contracts.

(3) The requirements and procedures for sealed competitive bidding are presented in §1753.8(a). The requirements and procedures for negotiation are presented in §1753.8(b).

(c) *Force account construction.* To obtain RUS approval of the force account method for major construction the borrower must demonstrate its ability to perform major construction based on past force account construction which fully met RUS construction standards and was as cost-effective as contract construction in the area. If the borrower has no record of past performance to support its request, but has adequate equipment and experienced personnel to perform the proposed construction, RUS may approve a small trial project. The requirements and procedures for force account construction are presented in subparts D, E, G, and H.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, and amended at 59 FR 43716, Aug. 25, 1994; 64 FR 16604, Apr. 6, 1999]

§ 1753.6 Standards, specifications, and general requirements.

(a) Materials, equipment, and construction financed with loan funds must meet the standards and specifications established by RUS. 7 CFR part 1755 lists the RUS Bulletins containing the standards and specifications for telephone facilities. Materials and equipment meeting these standards are included on the List of Material Acceptable for Use on Telecommunications Systems of RUS Borrowers, I.P. 300-4. This bulletin may be obtained by subscription from the Super-

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intendent of Documents, Government Printing Office, Washington, DC 20402.

(b) The borrower may use RUS loan funds to finance nonstandard construction materials or equipment only if approved by RUS in writing prior to purchase or commencement of construction.

(c) Only new materials and equipment may be financed with loan funds, unless otherwise approved by RUS. The materials and equipment must be year 2000 compliant, as defined in 7 CFR 1735.22(e).

(d) All materials and equipment financed with loan funds are subject to the "Buy American" provision (7 U.S.C. 901 *et seq.* as amended in 1938).

(e) All software, software systems, and firmware financed with loan funds must be year 2000 compliant, as defined in 7 CFR 1732.22(e).

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, and amended at 59 FR 43716, Aug. 25, 1994; 63 FR 45679, Aug. 27, 1998; 64 FR 16605, Apr. 6, 1999]

§ 1753.7 Plans and specifications (P&S).

(a) The P&S consist of an RUS contract form, the appropriate RUS specifications, and such additional information and documents needed to provide a clear, accurate, and complete understanding of what is included in the construction.

(b) 7 CFR 1755.93 provides a list of the RUS forms of telecommunications contracts for use in purchasing telephone materials and equipment and for constructing telephone facilities with loan funds. Also listed is the source where copies may be obtained.

(c) The appropriate standards and specifications listed in 7 CFR part 1755 shall be included in the P&S. When RUS has not prepared standards and specifications, the borrower shall use general engineering requirements and specifications prepared by the borrower's engineer. The specifications prepared by the borrower's engineer and based on general engineering requirements shall be subject to review and approval by RUS for all major construction, including major projects which would be exempted from RUS approval under paragraph (e) of this section.

(d) The P&S shall be based on the LD approved by RUS. Section 1753.3 presents the requirements and procedures for obtaining RUS approval for construction that does not conform to the LD approved by RUS.

(e) RUS approval of P&S is required for construction that is estimated to cost over \$500,000 or 25% of the total loan, whichever is less, and for all building construction. P&S for all other construction are exempt from RUS review and approval except that, at the time of contract approval, RUS will examine the plans and specifications for conformity with the loan purposes and to determine that they comply with other requirements of this part.

(f) RUS will approve only contracts that will provide for at least the following requirements.

(1) *Equal employment opportunity provision.* If this provision is not already in the contract, RUS Contract Form 270, Equal Opportunity Addendum, shall be attached and made a part of the contract.

(2) *Liquidated damages provision.* (i) If not covered by the contract, an appropriate liquidated damages provision, in a form prescribed by RUS, shall be included and made a part of the contract

(ii) The liquidated damages must be based upon the borrower's best estimate of the damages it would incur as a result of the contractor's default.

(3) *Insurance and bond requirements.* (i) The insurance provision shall provide coverage as required by 7 CFR 1788.

(ii) A contractor's bond shall be furnished as required by 7 CFR part 1788.

(iii) The borrower is responsible for ensuring that its contractor complies with the insurance and bond requirements.

(4) Telecommunications software license provision. If the borrower is required to enter into a software license agreement in order to use the equipment, the contract must contain the RUS prepared Software License Agreement as an Addendum.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, and amended at 59 FR 17679, Apr. 14, 1994; 64 FR 16605, Apr. 6, 1999]

§ 1753.8 Contract construction procedures.

(a) *Sealed, competitive bidding*—(1) *Bid opening date.* The borrower is responsible for scheduling the bid opening date. If RUS review of P&S is required by §1753.7, the borrower shall wait until approval has been received before setting the date. In setting the date, sufficient time should be allowed for the bidders to examine the project site and prepare their bids. The borrower shall notify GFR of the bid date and invite GFR to attend.

(2) *Invitations to bid.* The borrower is responsible for sending invitations to prospective bidders and taking any other action necessary to procure full, free, and competitive bidding. The borrower should obtain from its engineer a list of prospective bidders and a recommendation indicating which bidders are considered qualified. The minimum number of contractors to be invited to bid on contracts for various types of facilities is set forth in subparts D, E, F, or H.

(3) *Qualifying bidders.* If the notice and instructions to bidders require that bidders show evidence of meeting certain requirements, the borrower shall qualify bidders before issuing P&S to them. Procedures for qualifying bidders are contained in subparts D, E, and F.

(4) *Receipt of bids.* The borrower shall write on the outside envelope of any bid or bid amendment, the date and time the bid was received. Any bid received from an unqualified bidder or after the time specified for opening shall be returned promptly to the bidder unopened.

(5) *Procedure when fewer than three bids are received.* If fewer than three valid bids are received, the borrower shall consult with RUS to determine whether the bids are to be opened or returned unopened. RUS requires that the project be rebid if fewer than three bids are received and RUS determines that one or more other bidders with an express interest in bidding is available and could meet the bid requirements, but was not invited to bid. RUS shall also require rebidding if it is found that qualified bidders were discouraged from bidding by unreasonable bid requirements (such as late notification