

PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

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Subpart A—General

SOURCE: 54 FR 39267, Sept. 25, 1989, unless otherwise noted. Redesignated at 55 FR 39396, Sept. 27, 1990.

§ 1753.1 General.

(a) The standard RUS Telecommunications Loan Documents contain provisions regarding procurement of materials and equipment and construction of telecommunications facilities by telecommunications borrowers. This part implements certain of the provisions by setting forth requirements and procedures. Borrowers shall follow these requirements and procedures whenever using loan funds to purchase materials and equipment or perform construction, unless they have received the Administrator's written approval to do otherwise.

(b) The typical procedure followed in constructing a project financed by an RUS loan begins with the prospective borrower obtaining the necessary preloan engineering and developing a complete loan application, including an LD (See 7 CFR part 1737). If a loan

is approved and all prerequisites to advance of funds are satisfied, the borrower may proceed with the purchase and installation of materials and equipment and the construction of telephone facilities pursuant to this part 1753. Subpart A describes

(1) RUS's general requirements with respect to steps to be taken after the loan is approved and before construction begins (See §1753.3),

(2) RUS requirements with respect to methods of construction (See §§1753.5 and 1753.6),

(3) RUS requirements regarding sealed competitive bidding and negotiated bidding of construction contracts (See §§1753.6 and 1753.9),

(4) RUS standards for materials, equipment, and construction financed with loan funds (See §1753.7), and

(5) RUS requirements for subcontracts and contract amendments covering construction financed with loan funds (See §§1753.10 and 1753.12).

(c) Each borrower is responsible for the construction of its facilities and for the procurement of materials and equipment that are best suited to its needs.

(d) If contracts, P&S, or other methods of procurement are subject to RUS approval pursuant to the provisions of the loan contract, as implemented by this part, RUS will review the documents or proposals submitted and notify the borrower in writing of approval or disapproval. RUS may withhold approval if, in RUS's judgment:

(1) The P&S or contract will not accomplish loan purposes.

(2) Provisions of the P&S or contract will add unnecessary expense to the project.

(3) The proposal, method of procurement, or P&S do not conform to RUS engineering criteria or construction standards, or if they present unacceptable loan security risks to RUS.

(4) The P&S or contract have been modified.

(e) The requirements and procedures covering procurement of architectural and engineering services are described in subpart B of this part.

(f) Single copies of RUS forms cited in this part are available from Administrative Services Division, Rural Utilities Service, United States Department

of Agriculture, Washington, DC 20250-1500. These RUS forms may be reproduced.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 64 FR 16604, Apr. 6, 1999]

§ 1753.2 Definitions.

For the purpose of this part 1753:

Alternate— A solicitation for a bid adjustment for a specified deviation from the Plans and Specifications.

Architect— A person registered as an architect in the state where construction is performed, or a person on the borrower's staff, approved by RUS, authorized to perform architectural services.

Bid guarantee— A bid bond or certified check required of contractors bidding on construction work to ensure that the bidder, if successful, will furnish a satisfactory performance bond ensuring completion of work.

Central office building— The facility housing the central office equipment.

Central office equipment— Switching and signaling equipment that performs call origination and completion functions for subscribers.

Closeout documents— The documents required to certify satisfactory completion of all obligations under a contract or force account proposal.

Construction— Purchase and installation of telecommunications facilities in a borrower's system using loan funds.

Contract— The agreement between the borrower and an independent contractor covering the purchase, construction, or both of telephone facilities to be included in the borrower's telephone system.

Contract construction— Construction and installations performed using an RUS contract form. See 7 CFR 1755.93.

Engineer— A person registered as an engineer in the state where construction is performed, or a person on the borrower's staff, approved by RUS, authorized to perform engineering services.

FAP (force account proposal)—The borrower's detailed plans submitted to RUS for force account construction.

Force account construction—Construction performed by the borrower's employees under an RUS approved FAP,

with the borrower furnishing all materials, equipment, tools, and transportation.

FRS—RUS Form 481 (OMB control number 0572-0023), Financial Requirement Statement.

GFR—RUS General Field Representative.

Installation—The act of setting up or placing in position equipment for service or use in the borrower's system.

Interim construction—The purchase of equipment or the conduct of construction under an RUS-approved plan of interim financing. See 7 CFR part 1737.

Interim financing—Funding for a project which RUS has acknowledged may be included in a loan, should said loan be approved, but for which RUS loan funds have not yet been made available.

Labor and materials—All the labor and materials required for construction.

LD (loan design)—Supporting data for a loan application. See 7 CFR part 1737.

Loan—Any loan made or guaranteed by RUS. See 7 CFR part 1735.

Loan funds—Funds provided by RUS through direct or guaranteed loans. See 7 CFR part 1744 subpart C.

Loan purposes—The high level objectives of the loan are to fund the construction. These purposes are first stated in the characteristics letter described in 7 CFR 1737.80, which is sent to the applicant to offer a loan after RUS has completed its preloan studies.

Major construction—A telecommunications plant project estimated to cost more than \$250,000, including all labor and materials.

Minor construction—A telecommunications plant project estimated to cost \$250,000 or less, including all labor and materials.

Minor errors or irregularities—A defect or variation in a seller's bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the borrower determines whether an error or irregularity is "minor."

Modernization plan—A State plan, which has been approved by RUS, for

improving the telecommunications network of those Telecommunications Providers covered by the plan. A Modernization Plan must conform to the provisions of 7 CFR part 1751, subpart B.

Negotiation—Any form of purchasing or contracting other than sealed competitive bidding. Any contract awarded without using the sealed competitive bidding procedure is a negotiated contract.

Outside plant—The facilities that conduct electrical or optical signals between the central office and the subscriber's network interface or between central offices.

Performance bond—A surety bond on a form satisfactory to RUS guaranteeing the contractor's faithful performance of a contract.

P&S (plans and specifications)—An RUS contract form, the appropriate specifications, and such additional information and documents needed to provide a clear, accurate, and complete understanding of the installations to be made or construction to be performed.

Project—The construction or installation described in the P&S.

Responsive bid—A bid that complies with the requirements of the plans and specifications.

RTB—the Rural Telephone Bank, established as a body corporate and an instrumentality of the United States, to obtain supplemental funds from non-Federal sources and utilize them in making loans, for the purposes of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of telephone lines, facilities, or systems, for RUS borrowers financed under sections 201 and 408 of the Act.

RUS—the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance and Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to Rural Electrification Administration with respect to administering certain electric and telecommunications program. See 7 CFR 1700.1.

Sealed competitive bidding—A method of contracting that employs sealed competitive bids, public opening of bids, and award of the contract to the bidder submitting the lowest responsive bid. See §1753.8.

Single source negotiation—Negotiating with a single source (contractor or seller).

Special equipment—Equipment used primarily for the transmission and enhancement of voice, data, carrier, radio and light signals, and other equipment and facilities, including incidental cable and other transmission equipment.

Subcontract—A secondary contract undertaking some of the obligations of a primary contract. Under all RUS forms of contract, the primary contractor bears full responsibility for the performance of the subcontractor.

Unbalanced bid—A bid which contains pricing for a task or material that is significantly higher or lower than pricing for similar tasks or materials.

Work order construction—Minor construction performed by the borrower's employees, pursuant to its work order procedure, with the borrower furnishing all materials, equipment, tools, and transportation.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 58 FR 66259, Dec. 20, 1993; 59 FR 17464, Apr. 13, 1994; 64 FR 16604, Apr. 6, 1999]

§ 1753.3 Preconstruction review.

(a) Advance RUS approval must be obtained for any construction that does not conform to RUS standards and specifications or the approved LD, such as construction of extensions to serve subscribers in areas not included in the LD (See 7 CFR part 1737). For loans approved after RUS approval of the modernization plan in the borrower's state, the proposed construction must conform to the modernization plan, as required by 7 CFR part 1751, subpart B. To obtain approval, the borrower shall submit a written proposal containing:

(1) A description of the work, indicating any deviations from the approved LD or RUS standards and specifications.

(2) An engineering study covering the deviations if there are changes in the design.

(3) A cost estimate for labor, engineering, materials, and overheads.

(4) If applicable, a brief analysis from the borrower demonstrating that the proposed changes conform to the modernization plan.

(b) Before any construction, including interim construction, is initiated, the GFR shall meet with the borrower to review the LD to determine if any significant changes have occurred since its approval by RUS. It is important that the design and construction of the proposed facilities be based on the latest information on subscriber needs.

(c) If the borrower and GFR agree that there have been no significant changes, the borrower may proceed.

(d) If the GFR finds that the LD is no longer satisfactory, the borrower shall prepare an amendment to the LD incorporating the necessary revisions (See 7 CFR part 1737). The borrower must obtain RUS approval of the LD amendment before proceeding with engineering activities on any project to be financed with loan funds.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 58 FR 66259, Dec. 20, 1993; 59 FR 17464, Apr. 13, 1994; 64 FR 16604, Apr. 6, 1999]

§ 1753.4 Major and minor construction.

RUS's general requirements for construction are set forth in this subpart A. Additional requirements and procedures for different types of major construction are presented in subparts D, E, F, G, and H (OMB control number 0572-0062). The requirements and procedures for minor construction are presented in subpart I. Borrowers may, at their option, follow the procedures in subparts D, E, F, G, and H for any minor construction.

§ 1753.5 Methods of major construction.

(a) All major construction projects financed by loan funds shall be performed pursuant to a contract approved by RUS and awarded through sealed competitive bidding unless

(1) A specific exception is granted in subparts D, E, F, G, or H, or

(2) Written RUS approval is obtained.

(b) *Contract construction.* (1) RUS approval of the borrower's award of the

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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, as 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 Superintendent of Documents, Government Printing Office, Washington, DC 20402.

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(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, as 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, as 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

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to bidders) or if the borrower fails to follow the bid procedure.

(6) *Conduct of bid openings.* The borrower shall conduct bid openings open to the public. The borrower should be able to contact its attorney for immediate consultation.

(7) *Review of bids.* The borrower shall review all bids prior to reading any bid results to determine that:

(i) The bid guarantees are adequate.

(ii) All minor errors or irregularities made through inadvertence are corrected or waived. Failing this, the bid shall be rejected as nonresponsive.

(iii) In the event of non-minor errors or irregularities, the bid is rejected and the bid price not disclosed.

(8) *Reading of bids.* Bid prices shall not be read until the borrower has reviewed all bids to determine if there are any minor errors or irregularities that may affect the recommendation as to award. These shall be made public at the same time the bid price is announced.

(9) *Evaluating bids.* The borrower shall consider the same alternates in all bids in determining the low bid.

(10) *Rejection.* The borrower shall reject:

(i) All bids if quoted prices are not acceptable or if the specifications were ambiguous and resulted in bidders having different interpretations of the requirements.

(ii) Any bid that is not responsive, or is incomplete, or submitted by an unqualified bidder, or unbalanced between labor and materials or other respects.

(11) *Award of contract.* (i) The borrower shall obtain from the engineer the determination of the lowest responsive bid, a tabulation of all bids and the engineer's recommendation for award of the contract. Contract award is subject to RUS approval if either the cost of the project is over \$500,000 or the contract is with an organization affiliated with the borrower. Contract award of all other projects is not subject to RUS approval.

(ii) If an award is made, the borrower shall award the contract to the lowest responsive bidder. The borrower may award the contract immediately upon determination of the lowest responsive

bidder if the following conditions are met:

(A) The project is included in an approved loan and adequate funds were budgeted in the loan and are available.

(B) All applicable RUS procedures were followed, including those in the Notice and Instructions to Bid in the standard forms of contract.

(iii) If RUS approval of the award of contract is required under this paragraph (a)(11), the borrower shall send to RUS for consideration of approval of the award:

(A) Two copies of the low bid.

(B) The engineer's recommendation and the tabulation of all bids.

(C) Evidence of acceptance of the low bid by the borrower, such as:

(1) Certified copy of board resolution or

(2) letter or telegram to RUS signed by a properly authorized corporate official.

(iv) If RUS approval of the award of contract is not required under this paragraph (a)(11), the borrower shall keep a file available for inspection by RUS. The file shall be kept for at least two years and shall include:

(A) One copy of all received bids.

(B) The engineer's recommendation and tabulation of all bids including "Buy American" evaluations, if any, and all other evaluations required by law.

(C) Evidence of acceptance of the low bid by the borrower, such as a copy of the board resolution certified by the Secretary of the board.

(12) *Execution of contract.* (i) The borrower shall submit to RUS three original counterparts of the contract executed by the contractor and borrower.

(ii) If RUS approves the contract, it shall return one copy to the borrower and send one copy to the contractor.

(b) *Negotiated construction contracts.* (1) For the construction of certain facilities the borrower may negotiate a contract rather than solicit sealed competitive bids. Refer to the appropriate subparts E, F, or H for specific requirements and procedures.

(2) For negotiated purchases, borrowers shall use RUS contract forms, standards, and specifications.

(3) For all contract forms except RUS Form 773:

(i) After a satisfactory negotiated proposal has been obtained, the borrower shall submit it to RUS for approval, along with the engineer's recommendation, and evidence of acceptance by the borrower.

(ii) If RUS approves the negotiated proposal, the borrower shall submit three copies of the contract, executed by the contractor and borrower, to RUS for approval.

(iii) If RUS approves the contract, RUS shall return one copy of the contract to the borrower and one copy to the contractor.

(4) For RUS Form 773, the borrower is responsible for negotiating a satisfactory proposal, executing contracts, and closing the contract. See subparts F and I of this part for requirements for major and minor construction, respectively, on Form 773.

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

§ 1753.9 Subcontracts.

(a) RUS construction contract Forms 257, 397, 515, and 525 contain provisions for subcontracting. Reference should be made to the individual contracts for the amounts and conditions under which a contractor may subcontract work under the contract.

(b) RUS Form 282, Subcontract, shall be used for subcontracts under construction and installation contracts.

(1) Minor modifications or additions may be made to the subcontract form, as long as they do not change the intent of the primary contract. Any alterations to the subcontract shall be initialed and dated by the persons executing the subcontract.

(2) Subcontracts shall be prepared in quadruplicate and all copies executed by the contractor and subcontractor and consented to by the borrower and surety, if any.

(3) Four executed copies of the subcontract shall be forwarded to RUS for approval. Upon approval, one copy each will be sent to the borrower, contractor, and subcontractor.

(c) As stated in contract Forms 257, 397, 515, and 525, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is

not relieved of any obligations to the borrower and to the Government under the contract.

(d) As stated in the contract, construction shall not be performed by the subcontractor before approval of the subcontract by RUS.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 59 FR 43716, Aug. 25, 1994]

§ 1753.10 Preconstruction conference.

The borrower shall conduct a conference, attended by the borrower, contractor, and resident engineer prior to the beginning of construction to provide an opportunity to discuss and agree on responsibilities, procedures, practices, and methods before the work begins. The borrower shall provide each participant with a copy of the conference results. The GFR shall be invited to attend this conference.

§ 1753.11 Contract amendments.

(a) The borrower must obtain RUS approval before execution of any amendment to a contract if

(1) The amendment alters the terms and conditions of the contract or changes the scope of the project covered by the contract regardless of the amount of the contract before amendment,

(2) The amendment increases the amount to be paid under the contract by 20% or more, or

(3) The amendment causes an unbonded contract to require a contractor's performance bond. This would occur when a contract that is executed in an amount below that requiring a performance bond by 7 CFR part 1788, subpart C, is amended to an amount above that amount.

(b) Advance RUS approval to execute other contract amendments is not required. These amendments may be submitted to RUS at any time prior to closeout. If a borrower wishes to receive an advance of funds based on an amended contract amount (i.e., amendments that increase a contract by less than 20%), the borrower may initiate an increase in the amount approved for advance by submitting three copies of the amendment to RUS for approval.

(c) For each amendment executed, the borrower shall make certain that:

(1) The contractor's bond covers the additional work to be performed. If the amendment by itself (or together with preceding amendments) increases the original contract price by 20% or more, a bond extension will be required to bring the penal sum of the bond to the total amended contract price.

(2) If an amendment covers construction in a county or state not included in the original contract, the borrower and contractor are licensed to do business in that location.

(d) Upon execution of any amendment that causes the amended contract amount to exceed the original contract amount by 20% or more, three copies of the amendment shall be submitted to RUS for approval.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 64 FR 16605, Apr. 6, 1999]

§§ 1753.12–1753.14 [Reserved]

Subpart B—Engineering Services

SOURCE: 54 FR 3984, Jan. 27, 1989, unless otherwise noted. Redesignated at 55 FR 39397, Sept. 27, 1990.

§ 1753.15 General.

(a)(1) The standard RUS loan documents contain provisions regarding engineering and architectural services performed by or for RUS telecommunications borrowers. This part implements certain of the provisions by setting forth the requirements and procedures to be followed by borrowers in selecting architects and engineers and obtaining architectural and engineering services by contract or by force account.

(2) Borrowers shall obtain architectural and engineering services only from persons or firms which are not affiliated with, and have not represented, a contractor, vendor or manufacturer who may provide labor, materials, or equipment to the borrower under any current loan.

(3) Preloan architectural and engineering services may be provided by qualified personnel on the borrower's staff or by consultants. Neither the selection of a preloan architect or engineer by a borrower, nor the contractual

arrangements with them, requires RUS approval.

(4) Postloan architectural and engineering services shall be obtained by borrowers from registered architects and engineers licensed in the State in which the facilities will be located, except where RUS has approved the borrower to provide these services by the force account method. When the extent of the proposed major or minor construction is such that the postloan engineering involved is within the capabilities of employees on the borrower's staff, the borrower may request RUS approval to provide such services. This method of providing engineering services is referred to as force account engineering. Refer to §1753.17(c).

(5)(i) For major construction, services provided by architects and engineers not on the borrower's staff must be provided under Form 220, Architectural Service Contract, or Form 217, Postloan Engineering Service Contract—Telecommunications. These contracts require RUS approval.

(ii) For minor construction, borrowers may use the contracts in paragraph (a)(5)(i) of this section for postloan architectural or engineering services or any other form of contract, such as Form 245, Engineering Service Contract, Special Services—Telephone. RUS approval of contracts for postloan architectural or engineering services associated with minor construction, except for buildings covered in paragraph (a)(6) of this section, is not required.

(6) For buildings to be constructed with RUS funds, postloan architectural or engineering services shall be obtained if (1) the construction cost exceeds \$50,000 (prefab buildings using manufacturer's specifications approved by RUS are exempt from this requirement) or (2) soil or seismic conditions require special design considerations.

(b) For the purpose of this subpart B:

(1) *Contract*—The services contract between the borrower and its architect or engineer.

(2) *Force Account Engineering*—Any preloan or postloan engineering services performed by the borrower's staff.

(3) *Postloan engineering services*—The design, procurement, and inspection of

construction to accomplish the objectives of a loan as stated in a LD approved by RUS.

(4) *Preloan engineering services*—The planning and design work performed in preparing a LD. This consists of helping the borrower determine the objectives for a loan, including consideration of RUS's requirements relating to the modernization plan, selecting the most effective and efficient methods of meeting loan objectives, and preparing the LD which describes the objectives and presents the method selected to meet them.

(c) Single copies of RUS forms and publications cited in this part are available free from Administrative Services Division, Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250-1500. These forms and publications may be reproduced.

(d)(1) All outside architects and engineers employed by RUS telephone borrowers shall have insurance coverage as required by 7 CFR part 1788.

(2) Borrowers shall ensure that their architects and engineers comply with the insurance requirements of their contracts. See 7 CFR 1788.54.

(e)(1) Borrowers shall make prompt payments to architects and engineers as required by the contract.

(2) RUS shall not make loan funds available for late payment interest charges.

[54 FR 3984, Jan. 27, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 58 FR 66259, Dec. 20, 1993; 59 FR 17464, Apr. 13, 1994; 64 FR 16605, Apr. 6, 1999]

§ 1753.16 Architectural services.

(a) The borrower shall be responsible for selecting an architect to perform the architectural services required in the design and construction of buildings.

(b)(1) The borrower shall use Form 220 when contracting for architectural services for major construction, except that the borrower may use either Form 220 or Form 217 if the building is an unattended central office building.

(2) The borrower and the architect negotiate the fees for services under Form 220.

(3) Reasonable modifications or additions to the terms and provisions in

Form 220 may be made, subject to RUS approval, to obtain the specific services needed for a building.

(4)(i) Three copies of Form 220, executed by the borrower and the architect, shall be sent to GFR to be forwarded to RUS for approval. RUS will review the contract terms and conditions. RUS will not approve the contract if, in RUS's judgment:

(A) Unacceptable modifications have been made to the contract form.

(B) The contract will not accomplish loan purposes.

(C) The architectural service fees are unreasonable.

(D) The contract presents unacceptable loan security risk to RUS.

(ii) If RUS approves the contract, RUS will send one copy to the architect and one copy to the borrower.

(5) Loan funds will not be available to pay for the preliminary architectural services if a loan is not made for the construction project, or if the construction project is abandoned.

(6) Subpart D of 7 CFR part 1753 sets forth the requirements and procedures to be followed by borrowers constructing central office, warehouse, and garage buildings with RUS loan funds.

(c)(1) RUS telephone borrowers shall obtain two copies of a completed Form 284, Final Statement of Architect's Fees, when all services and obligations required under the architectural services contract have been completed. All fees shown on the statement shall be supported by detailed information where appropriate. For example: out-of-pocket expense, cost plus, and per diem types of compensation shall be listed separately with labor, transportation, etc., itemized for each service involving these types of compensation.

(2) If Form 284 and supporting data are satisfactory, the borrower shall approve the statement, sign both copies, and send one copy to the GFR.

(3) Upon approval of Form 284 by RUS, the borrower shall promptly make final payment to the architect.

[54 FR 3984, Jan. 27, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 59 FR 43717, Aug. 25, 1994; 64 FR 16606, Apr. 6, 1999]

§ 1753.17 Engineering services.

(a)(1) All engineering services required by a borrower to support its application for a loan shall be rendered by a qualified engineer selected by the borrower or by qualified employees on the borrower's staff. The selection of the preloan engineer, the form of preloan engineering service contract, and the contract itself, are not subject to RUS approval. Borrowers, however, should discuss their proposed method of obtaining preloan engineering services with the GFR before proceeding with any arrangements.

(2) Form 835, Preloan Engineering Service Contract, Telephone System Design, is a suggested form of preloan engineering service contract. While use of this form of contract is not required, it will be helpful in determining the tasks to be performed. Any form of contract used shall specify that preloan engineering services conform to RUS requirements for preloan studies. See subpart D of 7 CFR part 1737.

(b)(1) *Major construction.* (i) Three copies of Form 217 executed by the borrower and the engineer shall be sent to the GFR to forward to RUS for approval. The engineer's estimate of the engineering fees, on Form 506, shall be included.

(ii) RUS will review the contract terms and conditions. RUS will not approve the contract if, in RUS's judgment:

(A) Unacceptable modifications have been made to the contract form.

(B) The contract will not accomplish loan purposes.

(C) The engineering service fees are unreasonable.

(D) The contract presents unacceptable loan security risk to RUS.

(E) The consulting engineering firm is affiliated with or has represented a contractor, vendor, or manufacturer who may provide labor, materials, or equipment to the borrower under any current loan.

(2) *Minor construction.* When a borrower contracts for an engineering firm to inspect and certify construction accounted for under the work order procedure or the Contract for Miscellaneous Construction Work and Maintenance Services, Form 773 (See 7 CFR part 1753 subpart I), the borrower shall

require that the certification be signed by a licensed engineer.

(c)(1) *Major construction.* When the extent and complexity of the proposed construction is such that the engineering involved is within the capabilities of employees on the borrower's staff, borrowers may request RUS approval to provide such services.

(i) The request shall include:

(A) A description of services to be performed.

(B) The name and qualifications of the employee to be in charge. RUS requires this employee to meet the State experience requirements for registered engineers. In the absence of specific State experience requirements, the employee must have at least eight years experience in the design and construction of telecommunication facilities, with at least two years of the work experience at a supervisory level. RUS does not require professional registration of this employee, but this does not relieve the borrower from compliance with applicable State registration requirements which may require a licensed individual to perform such services.

(C) The names, qualifications, and responsibilities of other principal employees who will be associated with providing the engineering services.

(D) A letter signed by an authorized representative of the borrower authorizing the engineering services to be performed by force account and certifying the information supporting the request.

(ii) RUS shall notify the borrower by letter of approval or disapproval to perform force account engineering. The letter shall set forth any conditions associated with an approval or the reasons for disapproval.

(iii) RUS's approval of force account engineering for major construction shall be only for the specific projects named in the notice of approval.

(2) *Minor construction.* (i) When the borrower proposes to perform the inspection and certification of minor construction, the following shall be submitted to the RUS:

(A) A copy of the employee's qualifications and experience record, unless previously submitted. RUS requires a minimum of four years of construction

and inspection experience. The employee cannot be engaged in the actual construction.

(B) A letter signed by an authorized representative of the borrower authorizing the performance of these services by the employee, subject to RUS approval, and certifying the supporting information.

(ii) RUS shall notify the borrower by letter of approval or disapproval of the borrower's staff employee to perform the inspection and certification of construction. The approval shall be limited to the employee's area of expertise.

(d)(1) Subject to the requirements of this part and other applicable regulations, RUS will make loan funds available for the architectural and engineering services up to the amounts included in the approved loan.

(2) Advance of funds shall be requested on an FRS as set forth in 7 CFR part 1744 subpart C.

(e) The borrower shall obtain status of contract and force account proposal reports from the engineer once each month. The report shall show for each contract or FAP the approved contract or FAP amount, the date of approval, the scheduled date construction was to begin and the actual date construction began, the scheduled completion date, the estimated or actual completion date, the estimated or actual date of submission of closeout documents, and an explanation of delays or other pertinent data relative to progress of the project. One copy of this report shall be submitted to the GFR.

(f)(1) Upon completion of all services required under the engineering service contract Form 217, the borrower shall obtain from the engineer four copies of the Final Statement of Engineering Fee, Form 506.

(2) If the statement is satisfactory, the borrower shall sign all copies and send three to the GFR.

(3) After RUS approval of Form 506, one copy shall be sent to the borrower and one copy sent to the engineer.

(4) The borrower shall promptly make final payment to the engineer.

[54 FR 3984, Jan. 27, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 59 FR 43717, Aug. 25, 1994; 64 FR 16606, Apr. 6, 1999]

§ 1753.18 Engineer and architect contract closeout certifications.

A certification of completion and inspection of construction signed by the borrower and countersigned in accordance with accepted professional engineering and architectural practice, by the engineer or architect, shall be prepared as evidence of completion of a major construction project. This certification shall make reference to the contract number and contract amount, and shall include the following:

(a) A statement that the construction is complete and was done in accordance with the RUS approved system design or layout or subsequent RUS approved changes.

(b) A statement that the construction was for loan purposes.

(c) A statement that construction used RUS-accepted materials and was in accordance with specifications published by RUS covering the construction which were in effect when the contract was executed, or in the absence of such specifications, that it meets other applicable specifications and standards (specify), and that it meets all applicable national and local code requirements as to strength and safety.

(d) A statement that the construction complies with the "Buy American" provision (7 U.S.C. 903 note) of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

(e) A statement that all necessary approvals have been obtained from regulatory bodies and other entities with jurisdiction over the project.

(f) A statement that all closeout documents required by this part have been examined and found complete such that the Contractor has fulfilled all obligations under the contract except for warranty coverage.

(g) A statement that the engineer or architect is not affiliated with and does not represent the contractor, vendor, or manufacturer who is a participant in the contract.

[64 FR 16606, Apr. 6, 1999]

§§ 1753.19–1753.20 [Reserved]

Subpart C [Reserved]

Subpart D—Construction of Buildings

SOURCE: 54 FR 39267, Sept. 25, 1989, unless otherwise noted. Redesignated at 55 FR 39396, Sept. 27, 1990.

§ 1753.25 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in constructing headquarters, commercial office, central office, warehouse, and garage buildings with loan funds.

(b) Terms used in this subpart are defined in § 1753.2.

(c) All plans and specifications for buildings to be constructed with loan funds are subject to the approval of RUS. In addition, preliminary plans and specifications for headquarters and commercial office buildings to be constructed with loan funds are subject to RUS approval.

(d) RUS Form 257, Contract to Construct Buildings, shall be used for the construction of all headquarters, commercial office, central office, warehouse, and garage buildings with loan funds. Refer to § 1753.26 for further instructions.

(e) The borrower shall use the sealed competitive bid procedure for all building construction, except for:

(1) Minor construction using subpart I procedures.

(2) Major construction, where the borrower has received advanced approval to perform the construction by force account.

Refer to §§ 1753.27 and 1753.29 for further instructions.

(f) The site location, design, and construction of the facilities must comply with all applicable laws and regulations, including:

(1) Pub. L. 90–480 (42 U.S.C. 4151) (Access to Physically Handicapped), which requires certain buildings financed with Federal funds be designed and constructed to be accessible to the physically handicapped.

(2) Pub. L. 91–596 (29 U.S.C. 651) the Occupational Safety and Health Act of 1970. OSHA issues rules and regulations covering occupational safety and health standards for buildings. These

regulations are codified in 29 CFR chapter XVII.

(3) 7 CFR part 1794, which provides for compliance with the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) implementing the procedural provisions of NEPA, as well as RUS's conformance with other laws, regulations, and Executive Orders regarding environmental protection.

(4) 7 CFR part 1792, subpart C, which requires that the building design comply with applicable seismic design criteria. Prior to the design of buildings, borrowers shall submit to RUS a written acknowledgement from the architect or engineer that the design will comply.

(g) All construction pertaining to the building structure shall be performed under one contract. Separate contracts may be used for planting shrubbery, surfacing of roads and parking areas, and other identifiable parts of the project not pertaining to the building structure. These separate contracts shall also be subject to RUS approval as described in this subpart D.

(h) The borrower is responsible for submitting evidence, satisfactory to RUS, establishing that clear title to the building site has been obtained. RUS will not approve the construction contract until it has given title clearance.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 59 FR 43717, Aug. 25, 1994; 64 FR 16606, Apr. 6, 1999]

§ 1753.26 Plans and specifications (P&S).

(a) For headquarters and commercial office buildings only, the borrower shall prepare preliminary P&S showing the floor plan and general architectural details of the building to be constructed using loan funds. In particular, the preliminary P&S shall address the requirements of § 1753.25(f) and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*). The P&S shall be submitted to the GFR and are subject to RUS approval.

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(b) The borrower shall prepare P&S for construction of all buildings. Each set of P&S shall include:

(1) RUS Contract Form 257, Contract to Construct Buildings, completed to the extent explained in (c) of this section.

(2) Complete and detailed specifications covering materials and workmanship.

(3) A detailed building plan. Where the building is to house electronic apparatus, the detailed plan or specifications shall include the equipment environmental requirements and special equipment required.

(4) A site plan for each building showing the building location and giving the legal description of the site. Sufficient information must be provided for the site so that it can be identified as the same property on which title opinion was submitted to RUS. The legal description shall be typed on the site plan. The borrower shall also furnish topographical information and a description of any proposed site development work and show proposed connections for public utilities.

(c) RUS Contract Form 257 shall be completed as follows:

(1) *List of names or kinds of buildings and locations*—Site plan and specifications must be identified with the appropriate building.

(2) *Alternates*—The borrower shall keep the number of alternates to a minimum. Items for which alternates are to be taken shall be fully described on a separate sheet in the specifications and the details shown on the plans, when necessary, and identified by the alternate number. The Notice and Instructions to Bidders shall explain how bids will be evaluated with respect to alternates.

(3) *Time for construction*—A reasonable time for completion of construction, considering local conditions, shall be determined by the borrower and inserted in the space provided. Too short a construction period may discourage bidders or influence their bids. Completion of the building, where central office equipment is involved, shall be coordinated with delivery of the equipment. The time of completion shall allow adequate drying time before the

central office equipment is stored or installed in the building.

(d) The plans and specifications shall show the identification and date of the model code used for seismic safety design considerations, and the seismic factor used. See 7 CFR part 1792, subpart C.

(e) Two sets of the building plans and specifications shall be prepared and submitted to the GFR.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 59 FR 43717, Aug. 25, 1994; 64 FR 16606, Apr. 6, 1999]

§ 1753.27 Bidding procedure.

Upon RUS approval of the P&S, the borrower shall proceed as follows:

(a) Bid documents shall consist of a copy of the approved P&S, including RUS Contract Form 257, completed in accordance with the instructions on the cover of the form and the plot plans showing site development details. For contracts in amounts of \$100,000 or less, the borrower must specify in the Notice and Instructions to Bidders whether the contractor will be required to furnish a performance bond or a builder's risk policy.

(b) The borrower shall determine that title to the real estate has been approved by RUS before the invitations to bid are released.

(c) The borrower shall set the time for opening of bids, allowing ample time for bidders to prepare bids.

(d) The borrower shall solicit bids as set forth in §1753.8(a)(2). Invitations shall be sent to at least six prospective bidders.

(e) The borrower shall conduct bid opening and award of contract in accordance with the procedure set forth in §1753.8(a).

§ 1753.28 Contract amendments.

(a) The general requirements for contract amendments are set forth in §1753.11.

(b) The borrower shall prepare construction contract amendments on RUS Contract Form 238, Construction or Equipment Contract Amendments. See 7 CFR 1755.93 to obtain copies of Form 238.

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§ 1753.29 Force account procedures.

(a) The borrower must obtain RUS approval of the force account method of construction of buildings in advance in order to obtain RUS financing.

(b) The borrower shall prepare the P&S in accordance with §1753.26.

(c) Prior to any construction activity or the purchase of materials or equipment, the borrower shall submit the FAP in duplicate to RUS, accompanied by a resolution indicating approval of the board of directors of the borrower or a letter signed by an authorized corporate official. The proposal shall include:

- (1) A Copy of the P&S.
- (2) An itemized list of all items of materials required for construction.
- (3) A construction schedule showing the estimated construction period for each major construction item.
- (4) An estimate of the material and labor and other costs for any construction item not provided for in the approved loan.

(d) Force Account construction to be financed with loan funds shall not be started until RUS approval has been received by the borrower.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 59 FR 43717, Aug. 25, 1994]

§ 1753.30 Closeout procedures.

(a) This section outlines the procedure to be followed to close out RUS Contract Form 257 (Contract to Con-

struct Buildings) and construction or rehabilitation performed by the force account method.

(b) *RUS Form 257 Contract.* (1) Whenever changes were made in the plans and specifications which did not require immediate submission to RUS of an amendment under §1753.11, a final contract amendment showing the changes shall be prepared.

(2) Upon completion of the project, the borrower shall obtain certifications from the architect or engineer that the project and all required documentation are satisfactory and complete. The requirements for this certification are contained in §1753.18.

(3) The engineer's or architect's contract closeout certification and the final amendment shall be submitted to RUS as a basis for the final advance of funds for the contract.

(4) After all required RUS approvals are obtained, final payment is made in accordance with article III of RUS Form 257 once the borrower has received the architect's or engineer's certifications regarding satisfactory completion of the project.

(c) Upon completion of force account construction, the borrower shall:

- (1) Arrange with its architect or engineer and the GFR for final inspection of the project.
- (2) Complete, with the assistance of its architect or engineer, the documents listed in the following table that are required for the closeout of force account construction.

DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION OF BUILDINGS

RUS Form No.	Description	Use with		No. of copies prepared by		Distribution	
		Contract	Force account	Contractor	Architect/engineer	Borrower	Contractor
238	Construction or Equipment Contract Amendment (if not previously submitted, send to RUS for approval).	X	.....	.....	(3)	(to RUS)	(to RUS)
181	Certificate of Completion (contract construction) ¹	X	.....	.....	2	1	1
231	Certificate of Contractor	X	.....	1	.....	1	.....
224	Waiver and Release of Lien From Each Supplier	X	.....	1	.....	1	.....
213	Certificate (buy American)	X	.....	1	.....	1	.....
None ²	"As Built" Plans and Specifications	X	X	.....	1	1	.....
None	Guarantees, Warranties, Bonds, Operating or Maintenance Instructions, etc.	X	.....	1	.....	1	.....
None	Architect/Engineer seismic safety certification	X	X	.....	2	1	1

¹ Cost of materials and services furnished by borrower are not to be included in Total Cost on RUS Form 181.
² When only minor changes were made during construction, two copies of a statement to that effect from the Architect will be accepted instead of the "as built" Plans and Specifications.

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(3) Make distribution of the completed documents as indicated in the table in this section.

(d) Final payment shall not be made until RUS has approved the closeout documents.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39396, Sept. 27, 1990, as amended at 59 FR 43717, Aug. 25, 1994; 64 FR 16606, Apr. 6, 1999]

§§ 1753.31–1753.35 [Reserved]

Subpart E—Purchase and Installation of Central Office Equipment

SOURCE: 54 FR 39267, Sept. 25, 1989, unless otherwise noted. Redesignated at 55 FR 39397, Sept. 27, 1990.

§ 1753.36 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing central office equipment financed with loan funds.

(b) Terms used in this subpart are defined in §1753.2 and RUS Contract Forms 525 and 545.

(c) Borrowers shall use RUS Contract Form 525, Central Office Equipment Contract (Including Installation), when the firm supplying the equipment will install it and RUS Contract Form 545, Central Office Equipment Contract (Not Including Installation) when the supplier of the equipment will not be installing it. In either case the appropriate specifications shall be included in the contract.

(d) Alternates, if any, specified in the P&S shall be kept to a minimum.

(e) The borrower shall take sealed competitive bids for all central office equipment to be purchased under RUS Contract Form 525 or 545 using the procedure set forth in §1753.38(a), unless RUS approval to negotiate is obtained.

(f) The borrower may request permission to negotiate with a single supplier for additional central offices to standardize equipment on a system basis. RUS approval to negotiate must be obtained before release of the plans and specifications to the supplier. Except for remote switching terminals associ-

ated with an existing central office, RUS will not approve negotiation with a non-domestic manufacturer for the purpose of standardization because such a purchase does not meet the RE Act “Buy American” provisions.

(g) Materials and equipment must meet the standards and general specifications approved by RUS. Materials and equipment included in I.P. 300-4, “List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers”, have been accepted as meeting these requirements. If the equipment is not included in the “List of Materials” but has been approved for field trial installation, the borrower must in each instance obtain field trial approval from RUS prior to entering into any agreement with a supplier.

(h) Only new equipment shall be purchased unless otherwise approved by RUS.

(i) All purchases of materials and equipment are subject to the “Buy American” requirements.

(j) If the sealed competitive bid procedure is followed, negotiation after bid opening will not be permitted.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 64 FR 16607, Apr. 6, 1999]

§ 1753.37 Plans and specifications (P&S).

(a) *General.* (1) Prior to the preparation of P&S, the borrower shall review with the GFR the current and future requirements for central office equipment.

(2) The P&S shall specify the delivery and completion time required for each exchange.

(3) The P&S shall provide for a complement of spare parts to be provided to the borrower. The quantity and type of spare parts shall be determined in accordance with the provisions in RUS Form 522 “General Specification for Digital, Stored Program Controlled Central Office Equipment.”

(4) P&S for equipment to be provided under a Form 545 contract shall require the supplier to provide specific installation information and a detailed bonding and grounding plan to be utilized by the engineer, borrower, and others responsible for the installation of the equipment.

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(b) *Preparation of P&S.* (1) The P&S shall include RUS Contract Form 525 or 545, Notice and Instructions to Bidders, specifications for the required equipment for each exchange, provision for spare parts, and all other pertinent data needed by the bidder to complete its proposal.

(2) Guidelines for the preparation of the detailed equipment specifications are contained in the Telecommunications Engineering and Construction Manual (TE&CM), which is available from RUS.

(c) RUS review of P&S is required for construction estimated to cost over \$500,000 total or estimated to cost more than 25% of the total loan, whichever is less.

(1) If RUS review is required, the borrower shall submit one copy of the P&S to the GFR for RUS review.

(2) RUS will review the P&S and notify the borrower in writing of approval or disapproval.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 64 FR 16607, Apr. 6, 1999]

§ 1753.38 Procurement procedures.

(a) *Sealed competitive bidding.* Sealed competitive bidding of central office equipment shall be in two steps: presentation and evaluation of suppliers' technical proposals, and compliance with the sealed competitive bidding procedure set forth in §1753.8(a). The procedure is as follows:

(1) *Solicitation of bids.* (i) After RUS approval of the specifications and equipment requirements (required only for projects expected to exceed \$500,000 or 25% of the loan, whichever is less), the borrower shall send "Notice and Instructions to Bidders" to suppliers with central office equipment included in the current Informational Publication (I.P.) 300-4, "List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers." I.P. 300-4 is a subscription item available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954. This "Notice" may also be sent to suppliers of non-domestic equipment currently accepted by RUS as meeting RUS technical standards. The "Notice" may also

be sent to suppliers of central office equipment accepted for field trial.

(ii) The "Notice" must set forth the method of evaluating bids and must require the submission of equipment lists and traffic calculations with the bids.

(iii) RUS Contract Forms 525 or 545 shall be used, except that the "Notice" shall state that prior to the bid opening a technical session will be conducted with each supplier to resolve any questions related to the technical proposal submitted by the supplier. The suppliers' technical proposals should be requested for presentation 30 days in advance of the bid opening to enable sufficient time to make the technical evaluation.

(iv) The borrower shall solicit bids as set forth in §1753.8(a)(2). The "Notice" shall be sent to at least three prospective bidders. A copy of the "Notice" and a list of such bidders shall be sent to RUS.

(v) At the request of an invited supplier, the borrower shall provide two copies of the P&S.

(2) *Technical Sessions.* (i) The borrower shall schedule individual technical sessions by the suppliers, notify each supplier of its scheduled date and time, notify the GFR of all scheduled dates and times, and request the following be available at the technical session:

(A) Lists of equipment, material and software.

(B) Proposed floor plan.

(C) Power and heat dissipation calculations.

(D) List of exceptions to plans and specifications.

(E) Protection and grounding requirements.

(F) Description of how office administration, maintenance and traffic collection are handled with step-by-step examples and printouts.

(G) Explanation of processor and/or memory expansion required to meet ultimate size. This shall include discussions of software, processor memory, and hardware additions needed for line additions and the introduction of various future services; the relative costs of installing the necessary hardware and software initially as compared with the anticipated cost if installed at

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the time when the future services are to be offered.

(H) Description of how special equipment such as loop tests, volunteer fire alarm circuit, line load control, etc., will function.

(I) Description of method for translating initial office administration information into machine language, and proposal as to whether it will be done by the borrower or by the supplier.

(J) A software license agreement (if required by the manufacturer) in the form indicated in §1753.38(c).

(K) Any other items pertinent to the technical proposal, such as information regarding changes that have been made in hardware and software of the equipment that is of like manufacture to that presently in operation in the borrower's system. This shall include requirements for additional spare parts or training which have developed as a result of significant change in system device technology.

(ii) The borrower shall review in detail all exceptions to the P&S. No exceptions will be accepted unless all bidders are notified, in writing, of the change in the specifications and permitted to incorporate the change in their proposal.

(iii) If the technical proposal is not responsive, the borrower shall notify the supplier, in writing, that its proposal will not be given further consideration and why.

(iv) Changes in the P&S resulting from the technical sessions shall be subject to RUS's review and approval.

(v) After evaluation of the technical proposals and RUS approval of the changes to P&S (required only for projects that are expected to exceed \$500,000 or 25% of the loan, whichever is less), sealed bids shall be solicited from only those bidders whose technical proposals meet P&S requirements. When fewer than three bidders are adjudged qualified by the borrower to bid, RUS approval must be obtained to proceed. Generally, RUS will grant such approval only if the borrower can demonstrate to the satisfaction of RUS that a good faith effort was made to obtain at least three competitive bids. This would be demonstrated if all suppliers currently listed in I.P. 300-4 were invited to submit technical proposals.

(vi) The borrower shall invite the GFR to attend the technical sessions.

(3) *Bidding and award of contract.* (i) All bids must be completed, dated, and signed prior to submission.

(ii) The bid opening and award of contract shall be conducted in accordance with the procedure set forth in §1753.8(a).

(iii) The spare parts bid shall always be priced separately and added to the base bid when determining the low bidder.

(b) *Single source negotiated procurement.* If RUS has approved the borrower's request to procure central office equipment through single source negotiation in accordance with requirements contained in §1753.36(f), the borrower shall proceed in accordance with this subsection.

(1) After RUS approval of the P&S and equipment requirements (required only for contracts expected to exceed \$500,000 or 25% of the loan, whichever is less), the borrower shall send two complete copies of the approved P&S to the supplier and request that a proposal be submitted.

(2) The borrower shall schedule a time and date for a technical session by the supplier and request that the items listed in §1753.38(a)(2)(i) be available at the technical session. In addition to these items, the supplier shall be requested to provide a description of the exact differences in hardware and software between the borrower's existing equipment and the proposed equipment so that the borrower can determine spare parts interchangeability, need for retraining, and the compatibility of administration of the old and new equipment.

(3) If the contract is expected to exceed \$500,000 or 25% of the loan, whichever is less, changes in the P&S resulting from the technical session shall be subject to RUS review and approval.

(4) The submitted proposal shall be based on the agreed-upon results of the technical evaluation and must be complete, dated, and signed.

(5) The borrower shall obtain an award recommendation from its engineer.

(6) The following shall be sent to RUS for review and approval:

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(i) A copy of the engineer's recommendation to the borrower, and

(ii) Evidence of acceptance of the proposal by the borrower, such as

(A) A certified copy of the board resolution, or

(B) A letter to RUS signed by an authorized corporate official.

(7) RUS approval of the proposal will be conditioned upon the borrower obtaining prices that are consistent with current competitive prices. Upon RUS approval of the proposal, three copies of the contract shall be prepared with all specifications and proposal documents, and performance bonds, to be executed by the supplier and borrower.

(8) The three complete, executed contracts shall be sent to the RUS Area Engineering Branch Chief for approval.

(9) If RUS approves the contract, one copy will be returned to the borrower and one copy will be sent to the supplier.

(10) Installation of the central office equipment and materials provided under RUS Contract Form 545 may be made in accordance with subpart I, if applicable, or by an approved Force Account Proposal (FAP).

(c) *Software license agreement (Addendum 2)*. The Addendum in this paragraph to RUS Form 525, Central Office Equipment Contract (Including Installation), and RUS Form 545, Central Office Equipment Contract (Not Including Installation), must be used with any central office equipment contract that requires a software license agreement and for which RUS financial assistance is to be provided.

Addendum 2—Software License Agreement

(1) *Definitions*. For the purpose of this Software License Agreement—

Contract means the RUS Form 525 Central Office Equipment Contract (Including Installation) or RUS Form 545 Central Office Equipment Contract (Not Including Installation),

dated _____, between

(the Licensee) and _____
(the Licensor).

Days means calendar days.

Licensed Software means the computer programs, furnished for the operation of the System(s) provided under the Contract, whether contained on a tape, disc, semiconductor device, or other memory device or

system memory consisting of logic instructions and instruction sequences in machine-readable object code, which manipulate data in the central processor, control and perform input/output operations, perform error diagnostic and recovery routines, control call processing, and perform peripheral control, administrative and maintenance functions; as well as Licensor's standard customer documentation, excluding source code, used to describe, maintain and use the programs provided under the Contract.

Licensee and *Licensor*, respectively, mean the parties signing the software license agreement as the licensee and licensor.

Right-to-Use Fee is defined in section (2).

Specifications means the RUS Form 522, General Specification for Digital, Stored Program Controlled Central Office Equipment, which is part of the Contract.

System means the stored program controlled central office and associated remote switching terminal or terminals which use the Licensed Software covered by this License.

(2) *Software License Provisions*. The Licensor may charge a fee, herein referred to as a Right-to-Use Fee, for use of the Licensed Software. The Right-to-Use Fee shall be included in the Total Base Bid as defined in the Contract. In consideration of the Right-to-Use Fee, the Licensor hereby grants the Licensee the right to use all Licensed Software, solely in connection with the System provided under this Contract, so that the System performs in accordance with the Contract and the Specifications.

(i) The Licensee's right to use the Licensed Software is non-exclusive and limited to use or operation in the United States of America, including its Territories, the Federated States of Micronesia, the Marshall Islands, Palau and the Commonwealth of Puerto Rico, with the System for which the Licensed Software is provided by the Licensor. The Licensee may reuse the equipment and its accompanying Licensed Software at another location within the Licensee's System without obtaining additional approvals from Licensor, provided, however, that the Licensee notify the Licensor, within ten (10) days, of the change in location of the equipment and Licensed Software.

(ii) The Licensee and any successor to the Licensee's title in the System may, without further consent of the Licensor, transfer the Licensed Software and all of the Licensee's rights and interests under this Software License to any transferee who acquires legal title to the System, provided that such transferee first agrees in writing to the Licensor to abide by all of the terms and conditions of this License including, without limitation, the territorial limitation stated in section (2)(i) and the restrictions on decompiling or reverse assembly stated in section (2)(iii). Licensee shall give Licensor

written notice thirty (30) days prior to any transfer. The Licensor shall not place any additional conditions on the transferee's use of the System or the Licensed Software. If the provisions of this section (2)(ii) are satisfied, thereafter the Licensee shall bear no responsibility for transferee's failure to abide by the terms and conditions of this License.

(iii) The Licensee shall take reasonable steps to protect the confidentiality of the Licensed Software and shall not decompile or reverse assemble all or any part of the Licensed Software to generate source code. The Licensee shall not make the Licensed Software available to any person except on a need to know basis. The obligations of the Licensee hereunder shall not extend to any information or data relating to the Licensed Software which is now available to the general public or becomes available by reason of the acts of the Licensor or third parties.

(iv) The Licensee may reproduce or copy the Licensed Software and related materials solely for the purpose of archival backup, in-house training and operating, maintaining, and administering the System provided under this Contract. In such reproduction, the Licensee shall include, upon all such copies of the Licensed Software, all proprietary notices, including the copyright notice within the Licensed Software program and related documentation in the form in which it is received from the Licensor.

(v) The Licensee acknowledges that the Licensed Software program is the property of the Licensor, and shall not do, or cause to be done, anything to activate any of the subsisting nonactivated computer instruction steps therein unless authorized in writing by the Licensor. The Licensor shall have the exclusive right to activate, or authorize the activation of, the subsisting nonactivated program instruction steps in the Licensed Software. In this event Licensee shall pay any additional Right-To-Use Fee(s) agreed to by Licensee and Licensor.

(vi) In the event the Licensor develops significant improvements to the Licensed Software, the Licensor may market the improvements as a separate offering requiring payment of an additional Right-to-Use Fee.

(vii) The Licensee shall not modify or otherwise change the Licensed Software other than at the direction of the Licensor. This provision shall not apply to:

(A) Changes to the Licensed Software which are necessary to preserve or restore service. Licensee shall use all reasonable efforts to contact Licensor before making any such changes. If the Licensor is unable to make the necessary changes promptly to the Licensed Software to preserve or restore service, then the Licensee may make only such changes to the Licensed Software as are necessary to preserve or restore service. In such event, Licensee shall promptly notify Licensor of the changes made by Licensee.

(B) Changes made by the Licensee to its own database; and

(C) Changes made by the Licensee in connection with the exercise of its rights under section (2)(xi).

(viii) Within thirty (30) days after written notice that a program or a release thereof has been discontinued and is no longer required for the operation of the System and the Licensor has furnished the Licensee with a new program that is fully satisfactory to the Licensee, the Licensee agrees to return the original and all copies of the discontinued program and specified related documents. If such return is impossible or impractical, the Licensee shall destroy said program and documents and provide the Licensor with a written notice of such destruction.

(ix) The Licensor warrants to the Licensee that any Software licensed under this Software License shall function for a period of five (5) years from the warranty start date defined in the Contract in accordance with the Specifications and any written or printed technical material provided by the Licensor to explain the operation of the Licensed Software and aid in its use. The Licensor shall correct all deficiencies within thirty (30) days from the date of receipt by the Licensor of written notice of such deficiencies from the Licensee. An extension of this thirty (30) day period may be allowed only if agreed upon by the Licensee and RUS. It shall be the Licensor's obligation to insert and thoroughly test, at no charge to the Licensee, any software amendment or alteration provided to satisfy the obligations of this section (2)(ix). If a deficiency is detected or a correction made within the final ninety (90) days of the warranty, the warranty shall be extended to a date ninety (90) days after the deficiency has been corrected.

(x) The Licensor shall hold harmless and indemnify the Licensee from any and all claims, suits, and proceedings for the infringement of any patent, copyright, trademark, or violation of trade secrets covering any Licensed Software used with the System, except for items of the Licensee's design or selection. If the Licensee's use of the Licensed Software is enjoined, the Licensor shall promptly, at its own expense, place the Licensee in a position where it is able to use the System in accordance with the Specifications, whether by:

(A) Modifying the Licensed Software or portion thereof so that it no longer infringes but remains functionally equivalent,

(B) Replacing the Licensed Software with noninfringing equivalent software,

(C) Obtaining for the Licensee a license or other right to use, or

(D) Such other actions as may be required. This shall be in addition to any other rights or claims which the Licensee may have. The Licensor shall, at its own expense, (and the

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Licensee agrees to permit the Licensor to do so) defend any suits which may be instituted by any party against the Licensee for alleged infringement of patents, copyright, trademark, or violation of trade secrets relative to the Licensor's performance hereunder. Either party shall notify the other promptly of any such claims, and the Licensee shall give to the Licensor full authority and opportunity to settle such claims, and shall reasonably cooperate with the Licensor in obtaining information relative to such claims.

(xi) In the event the Licensor becomes unwilling or unable to furnish support required by the Contract for the Licensed Software, the Licensor shall, upon written request of the Licensee, provide with the greatest possible dispatch all Licensed Software back-up documentation including proprietary information other than agreed excluded documentation. In this event, (1) the Licensee shall be permitted full use of all Licensed Software and documentation as long as the System is operational and (2) the Licensee may modify, or have modified, the Licensed Software for feature enhancement or proper equipment operation and becomes the owner of such modifications for all purposes, including patenting, copywriting, sale, or license thereof. Agreed excluded documentation is Licensed Software back-up documentation described in the first sentence of this section (2)(xi) which (A) is proprietary information of a third party, (B) was specifically described at the pre-bid technical session and individually identified in an attachment to the Bid, and (C) RUS and the Licensee agree, before bids are opened, may be excluded from the requirements of this section (2)(xi). In the event the Licensor furnishes agreed excluded documentation and the Licensee exercises its rights under this section (2)(xi), the Licensor shall use its best efforts to provide such agreed excluded information to the Licensee, or obtain continuing support agreements from the parties retaining legal rights to the excluded documentation. Licensor agrees that certain Licensed Software cannot be excluded from the requirements of this section (2)(xi) including, but not limited to, software, the absence or improper operation of which would significantly impair the operation of the System, would significantly impair the ability of the Licensee to generate revenue, or would pose a risk to RUS loan security.

(xii) A breach of this License by the Licensor is a breach of the Contract. Therefore, the remedies specified in the Contract shall apply.

(xiii) The Licensee shall have thirty (30) days after receipt of written notice from the Licensor to correct any breach of this License. Damages payable by the Licensee for its breach of this License shall not exceed the total Contract price. The Licensor shall not terminate this License unless:

(A) The Licensor has given RUS sixty (60) days notice before termination; and

(B) RUS agrees with the Licensor that termination is the only method available to prevent significant harm to the Licensor from additional Licensee defaults.

(xiv) The obligations of Licensee and Licensor and any successors in title under this Agreement shall survive the termination of this Agreement and continue after any termination of rights granted hereunder.

(xv) Licensee and Licensor agree that it will not, without the prior written permission of the other party, use in advertising, publicity, packaging, labeling, or otherwise, any trade name, trademark, trade device, service mark, symbol, or any other identification or any abbreviation, contraction, or simulation thereof owned by the other party or any of its affiliates or used by the other party or any of its affiliates to identify any of their products or services, unless otherwise agreed by the parties.

(xvi) This Software License Agreement shall prevail notwithstanding any conflicting terms or legends which may appear on or in the Licensed Software.

(xvii) If any Section or part thereof, in this Agreement shall be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, then the meaning of such section or part shall be construed so as to render it enforceable, to the extent feasible; and if no feasible interpretation would save such section or part, it shall be severed from this Agreement and the remainder shall remain in full force and effect. However, in the event such section or part is considered an essential element of this Agreement, the parties shall promptly negotiate a replacement therefor.

(xviii) This Software License and any amendments thereto, or revisions thereof, are subject to RUS approval.

LICENSOR

Company
Name _____
By _____
Title _____
Date _____

Licensee

Company
Name _____
By _____
Title _____
Date _____

[End of clause]

(d) *Contract amendments.* (1) The general requirements for contract amendments are set forth in §1753.11.

(2) Equipment contract amendments shall be prepared on RUS Contract Form 238, Construction or Equipment Contract Amendments.

(e) *Additions.* When additions to existing central office equipment are required:

(1) A proposal shall be requested from the supplier.

(2) The borrower shall prepare a plan containing an outline of the proposed use of the equipment, the proposal from the supplier and an estimate of the installation cost. If the total cost exceeds \$500,000, RUS approval of the award of contract is required. The borrower shall in this case submit its plan and the supplier's proposal to GFR. If the cost does not exceed \$500,000, the borrower's award of contract is not subject to RUS approval.

(3) If RUS approval was required by paragraph (e)(2) of this section, upon RUS approval the purchase may be made using RUS Contract Form 525, or 545, or when applicable, the procedures contained in subpart I of this part.

(4) If the purchase is to be made by contract, three executed copies of the contract with attachments are to be submitted to the RUS.

(5) Installation of the central office equipment and materials procured by RUS Contract Form 545 may be made in accordance with subpart I, if applicable, or by an approved FAP.

(f) *Preinstallation conference.* RUS recommends, but does not require, that the borrower hold a preinstallation conference, attended by the borrower, its engineer, equipment installers, and if possible the GFR, prior to the beginning of the installation of the central office equipment.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 59 FR 17679, Apr. 14, 1994; 64 FR 16607, Apr. 6, 1999]

§ 1753.39 Closeout documents.

Closeout of RUS Contract Form 525, Central Office Equipment Contract (Including Installation), and RUS Contract Form 545, Central Office Equipment Contract (Not Including Installation), shall be conducted as follows:

(a) *Contract amendments.* Amendments that must be submitted to RUS for approval, as required by §1753.11,

shall be submitted promptly. All other amendments may be submitted to RUS with the engineer's contract closeout certification.

(b) *Taxes.* Under the terms of RUS Contract Forms 525 and 545, the bid prices do not include any amounts which are or may be payable by the bidder or the borrower on account of taxes imposed upon the sale, purchase or use of equipment, material and software covered by the contracts. If any such tax is paid by the bidder, the contract requires that the amount is to be stated separately on all invoices and paid by the borrower.

(c) *Acceptance tests.* The borrower will perform acceptance tests as part of the partial closeout and final closeout of RUS Contract Form 525. Tests that will demonstrate compliance with the requirements of 7 CFR 1755.522 are contained in RUS Bulletin 1753E-201. Other tests demonstrating compliance will be acceptable. RUS Bulletin 1753E-201 is available from RUS, Program Support and Regulatory Analysis, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522.

(d) *Grounding system audit.* A grounding system audit shall be performed and found acceptable for equipment provided under Form 525 and 545 Contracts, prior to placing a central office or remote switching terminal into full service operation. The audits are to be conducted in accordance with guidelines contained in the applicable sections of RUS Form 522 "General Specification for Digital, Stored Program Controlled Central Office Equipment." The audits shall be performed by the contractor and borrower for Form 525 equipment and by the borrower for Form 545 equipment.

(e) *Partial Closeout Procedure.* Under conditions set forth in RUS Contract Form 525, a contractor may, when approved by the borrower, receive payment in full for central offices and their respective associated remote switching terminals upon completion of the installation without awaiting completion of the project where the contractor is to receive such payment, the procedure contained in the applicable sections of RUS Contract Form 525 shall be followed. In addition to complying with the appropriate partial

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closeout procedure contained in RUS Contract Form 525, the borrower shall:

(1) Obtain from the engineer a certification of partial closeout.

(2) Submit one copy of the summary to RUS with an FRS.

(f) *Final contract closeout procedure.* The documents required for the final

closeout of the central office equipment contract, RUS Contract Forms 525 and 545, are listed in the following table, which also indicates the number of copies and their distribution. The procedure to be followed is as follows:

DOCUMENTS REQUIRED TO CLOSEOUT CENTRAL OFFICE EQUIPMENT CONTRACT

RUS Form No.	Description	Use with		Prepared by		Distribution	
		RUS Form 525	RUS Form 545	Contractor	Engineer	Borrower	Contractor
238	Construction or Equipment Contract Amendment (if not previously submitted, send to RUS for approval).	X	X	.....	(3)	(to RUS)	(to RUS)
754	Certificate of Completion and Certificate of Contractor and Indemnity Agreement (if submitted, Form 744 is not required).	X	.....	3	3	2	1
517	Results of Acceptance Tests (prepare and distribute copies immediately upon completion of the acceptance tests of each central office).	X	.....	.....	2	1	1
752a	Certificate of Completion—Not Including Installation.	.....	X	.....	2	1	1
224	Waiver and Release of Lien (from each supplier).	X	.....	1	.....	1	.....
231	Certificate of Contractor.	X	.....	1	.....	1	.....
213	Certificate (Buy American).	X	X	1	.....	1	.....
None	Switching Diagram, as installed.	X	X	2	.....	2	.....
None	Set of Drawings (each set to include all the drawings required under the Specification, RUS Form 522).	X	X	2	.....	2	.....

(1) The borrower shall:

(i) Immediately following completion of the last central office equipment installation, arrange with the contractor's installer, connecting company (where necessary), and the GFR for performance of the acceptance tests of offices not previously tested. The date for testing should be established so that the installer will not be required to return to the site for the sole purpose of assisting in these tests. Accept-

ance tests shall be performed within 30 days of completion of the installation, unless otherwise requested in writing by the contractor and approved in writing by the borrower.

(ii) When the acceptance tests have been satisfactorily completed and the contractor has corrected all the discrepancies:

(A) Prepare and assemble the documents listed in the table in this section, Documents Required to Close Out Central Office Equipment Contracts.

(B) Notify the GFR that the project is ready for final RUS inspection.

(iii) Make the documents listed in the table available for GFR review on the date of final inspection.

(iv) Distribute the documents as indicated in the table. The documents listed for RUS shall be retained by the borrower for inspection by RUS for at least two years from the date of the engineer's contract closeout certificate.

(2) The documents required and the procedure to be used for equipment purchased and/or installations made using the method of minor construction are set forth in subpart I.

(g) Once RUS approval has been obtained for any required amendments, the borrower shall obtain certifications from the engineer that the project and all required documentation are satisfactory and complete. The requirements for the final contract certification are contained in §1753.18.

(h) Once these certifications have been received, final payment shall be made according to the payment terms of the contract. Copies of the certifications shall be submitted with the FRS, requesting the remaining funds on the contract.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 59 FR 31126, June 17, 1994; 59 FR 43717, Aug. 25, 1994; 62 FR 32477, June 16, 1997; 64 FR 16608, Apr. 6, 1999]

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Subpart F—Outside Plant Major Construction by Contract

SOURCE: 54 FR 39267, Sept. 25, 1989, unless otherwise noted. Redesignated at 55 FR 39397, Sept. 27, 1990.

§ 1753.46 General.

(a) This subpart implements and explains the provisions of the loan documents setting forth the requirements and procedures to be followed by borrowers when outside plant major construction by contract is financed by loan funds. Terms used in this subpart

are defined in §1753.2 and RUS Contract Form 515.

(b) The contract method for major construction is described in §1753.5(b).

(c) The two contract forms which may be used for major outside plant construction are Form 515 and Form 773. Limitations on the applicability of these forms shall be as follows:

(1) Form 515 shall be used for major outside plant construction projects which will be competitively bid. The contract contains plans and specifications and has no dollar limitation. See §§1753.47, 1753.48 and 1753.49.

(2) Contract Form 515, which is for \$250,000 or less, may, at the borrower's option, be negotiated. See §1753.48(b).

(3) RUS Form 773 may be used for minor outside plant projects which are not competitively bid because they cannot be designed and staked at the time of contract execution. Projects of this nature include routine line extensions and placement of subscriber drops. See subpart I of this part.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 59 FR 43717, Aug. 25, 1994; 64 FR 16608, Apr. 6, 1999]

§ 1753.47 Plans and specifications (P&S).

(a) *General.* (1) Prior to the preparation of P&S for the construction project:

(i) A review shall be made of the outside plant requirements, and the Loan Design (LD) shall be revised to reflect any needed changes (See §1753.3).

(ii) Deviations from the approved LD (7 CFR part 1737) must be approved by RUS (See §1753.3).

(2) The standard RUS specifications required for construction of outside plant facilities are:

(i) RUS Form 515a (Bulletin 345–150)—Specifications and Drawings for Construction of Direct Buried Plant.

(ii) RUS Form 515c (Bulletin 345–151)—Specifications and Drawings for Conduit and Manhole Construction.

(iii) RUS Form 515d (Bulletin 345–152)—Specifications and Drawings for Underground Cable Installation.

(iv) RUS Form 515f (Bulletin 345–153)—Specifications and Drawings for Construction of Pole Lines and Aerial Cables.

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(v) RUS Form 515g (Bulletin 345-154)—Specifications and Drawings for Service Entrance and Station Protector Installation.

(b) *Preparation of plans and specifications.* Each set of plans and specifications shall include:

(1) RUS Contract Form 515, “Telephone System Construction Contract (Labor and Materials).”

(2) The specifications described in paragraph (a)(2) of this section as specified by the borrower in the RUS Contract Form 515.

(3) Description of special assembly units and guide drawings, if any.

(4) Key, detail, and cable layout maps.

(5) RUS Contract Form 787, “Supplement A to Construction Contract, RUS Contract Form 515,” when the borrower proposes to provide any materials to the contractor. The borrower shall not order materials for a contractor without RUS approval. In such cases the borrower must attach Form 787 and a “List of Owner’s Materials on Hand” and/or a “List of Materials Ordered by Owner but Not Delivered” to contract Form 515 (See §1753.48(f) of this part). Any materials furnished under Supplement A shall be listed in RUS Bulletin 344-2 unless special RUS approval has been received by the borrower to use unlisted materials.

(c) *Submission of plans and specifications to RUS.* (1) If the project does not exceed \$500,000 or 25% of the loan, whichever is less, the borrower shall furnish GFR one set of P&S. The borrower may then proceed with procurement in accordance with §1753.48.

(2) If the project exceeds \$500,000 or 25% of the loan, whichever is less, RUS approval of P&S is required. Two sets of P&S shall be furnished to GFR. RUS will return one set to the borrower upon notice of approval. The borrower may then proceed with procurement in accordance with §1753.48.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, 55 FR 53488, Dec. 31, 1990, as amended at 64 FR 16609, Apr. 6, 1999]

§ 1753.48 Procurement procedures.

(a) *Sealed competitive bidding*—(1) *Qualifying bidders.* (i) The borrower is responsible for selecting qualified con-

tractors to bid on the project. See §1753.8(a)(3). Questions relating to bidders’ qualifications shall be resolved prior to the pre-bid conference.

(ii) RUS Form 274 or its equivalent, supplemented by RUS Form 276, shall be used for the submission of bidders’ qualifications for all types of construction and for the required information on the bidder and subcontractors.

(2) *Invitations to bid*— The borrower shall solicit bids as set forth in §1753.8(a)(2). Invitations shall be sent to at least 6 prospective bidders.

(3) *Pre-bid conference.* (i) Representatives of the borrower and its engineer shall be present at the pre-bid conference at the time and place designated in the Notice to Bidders. The borrower shall invite the GFR to attend the pre-bid conference.

(ii) The purpose of the pre-bid conference is to acquaint the bidders with the scope and special considerations of the project and to clarify any concerns the bidders may have.

(iii) No proposals shall be considered from bidders that do not attend the pre-bid conference unless the bidder has been notified by the engineer that such bidder’s attendance has been waived. Attendance can be waived if, in the judgment of the engineer, the bidder would gain no additional understanding of the construction project by attending the pre-bid conference.

(iv) The borrower shall obtain from the engineer the minutes of the pre-bid conference and shall distribute them to all potential bidders.

(v) When fewer than three bidders have been qualified to submit bids, RUS written approval must be obtained to proceed with requesting bids.

(4) *Bid openings.* (i) Bid openings and award of the contract shall be conducted in accordance with §§1753.5(b)(1) and 1753.8(a).

(ii) If §1753.8 requires RUS approval of award of the bid, the borrower shall submit to RUS two copies of the assembly unit sections of the apparent lowest responsive bid accepted by the borrower.

(b) *Negotiated procurement.* (1) Competitive bids are not required for outside plant construction that is estimated to cost \$250,000, or less, inclusive of labor and materials.

(2) The procedures to be followed are contained in §1753.8(b) and paragraphs (3) and (4) of this section.

(3) *Negotiation conference.* (i) The borrower shall schedule a conference to be attended by representatives of the engineer, the borrower and the contractor selected for negotiations. The borrower shall invite the GFR to attend this conference.

(ii) The purpose of the negotiation conference is to acquaint the contractor with the scope and special considerations of the project and to answer any questions.

(iii) The borrower shall obtain from the engineer notes covering the negotiation conference and shall distribute them to all attendees.

(4) Two copies of the assembly unit sections of the negotiated contractor's proposal shall be sent to the GFR for approval.

(c) *Contract amendments.* The borrower shall prepare contract amendments in accordance with §1753.11 on RUS Contract Form 526, Construction Contract Amendment.

(d) *Subcontracts.* The RUS requirements for subcontracts and the procedures to be followed are set forth in §1753.9.

(e) *Preconstruction conference.* The borrower shall conduct a conference, attended by the borrower, contractor, subcontractors, resident engineer, and the GFR, prior to the beginning of cable placement, to resolve any questions pertaining to the construction. Results of the conference shall be provided to each conference participant (See §1753.10).

(f) *Owner-furnished materials.* When the borrower furnishes materials under RUS Contract Form 787, Supplement A to Construction Contract, these steps shall be followed:

(1) Materials on hand to be furnished by the borrower shall be released to the contractor at the start of construction. Materials on order but not received shall be provided to the contractor as they become available. The borrower shall obtain from the contractor a written receipt for all such materials delivered.

(2) Materials on hand, until released to the contractor, shall be covered by fire and either wind-storm or extended

coverage insurance, exclusive of materials stored in the open and not within 100 feet of any building. Poles, wherever stored, shall be covered by fire insurance. All insured values must be at least 80 percent of the cash value of the property insured.

(3) Subject to adjustment at the time of final settlement, the borrower shall obtain from the contractor monthly invoices that show credit to the borrower, at the prices quoted in Form 787, Supplement A, for all materials furnished by the borrower and installed by the contractor during the preceding month.

(4) Any materials furnished by the borrower remaining as surplus at the completion of construction shall be returned to the borrower. For such materials, the borrower shall furnish a written receipt to the contractor and credit the contractor at the prices quoted in Supplement A.

(g) *Changes or corrections in construction.* (1) When changes or corrections in construction are necessary, and the cost of such changes or corrections is properly chargeable to the borrower, the borrower shall have its engineer prepare and sign four copies of a Construction Change Order, RUS Form 216, obtain borrower's approval and forward the four copies to the contractor. Receipt of the executed Construction Change Order by the contractor will constitute authorization to proceed with the changes or corrections.

(2) When the changes or corrections have been made, the borrower shall have the contractor complete the form, itemizing the costs in accordance with the terms of the contract, and return three copies to the borrower's engineer. A copy of each change order shall be attached to each copy of the construction inventory required to close out the contract.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 64 FR 16609, Apr. 6, 1999]

§ 1753.49 Closeout documents.

(a) *General.* The borrower shall be responsible for preparing the closeout documents with, if necessary, the assistance of the GFR.

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(b) *Documents required.* The following table lists the documents required to closeout the RUS contract Form 515.

DOCUMENTS REQUIRED TO CLOSEOUT CONSTRUCTION CONTRACT
[RUS Form 515]

RUS Form No.	Description	No. of copies prepared by		Distribution	
		Contractor	Engineer	Borrower	Contractor
724	Final Inventory—Certificate of Completion		2	1	1
724a	Final Inventory—Assembly Units		2	1	1
None	Contractor's Bond Extension (send to RUS when required).	(3)		(to RUS)	(to RUS)
281	Tabulation of Materials Furnished by Borrower	2		1	1
213	Certificate—"Buy American"	1		1	
None	Listing of Construction Change Orders		1	1	
224	Waiver and Release of Lien (from each supplier)	1		1	
231	Certificate of Contractor	1		1	
527	Final Statement of Construction		2	1	1
None	Reports on Results of Acceptance Tests		1	1	1
None	Set of Final Staking Sheets		1	1	
None	Tabulation of Staking Sheets		1	1	
None	Correction Summary (legible copy)		1	1	
None	Treated Forest Products Inspection Reports or Certificates of Compliance (prepared by inspection company or supplier).			1	
None	Final Key Map (when applicable)		1	1	
None	Final Central Office Area and Town Maps		1	1	

(c) *Closeout procedure.* (1) After construction has been completed in accordance with the plans and specifications, and acceptance tests have been made, the borrower shall arrange the time for a final inspection to be made by the borrower's engineer, the contractor, the GFR and a representative of the borrower.

(2) *Final inventory documents.* (i) The borrower shall obtain certifications from the engineer that the project and all required documentation are satis-

factory and complete. Requirements for these contract closeout certifications are contained in §1753.18.

(ii) The borrower shall prepare and distribute the final inventory documents in accordance with the tables contained in this section. The documents listed for RUS shall be retained by the borrower for inspection by RUS for at least two years from the date of the engineer's contract closeout certification.

STEP-BY-STEP PROCEDURE FOR CLOSEOUT OF CONSTRUCTION CONTRACT
[RUS Form 515]

Step No.	Sequence		Procedure
	When	By	
1	Upon Completion of Construction	Borrower's Engineer.	Prepares the following: a set of Detail Maps and a set (when applicable) of Key Maps which show in red the work done under the 515 contract; a Tabulation of Staking Sheet; and a tentative Final Inventory, RUS Forms 724 and 724a.
2	After acceptance tests made	Borrower's Engineer.	Forwards letter to the borrower with copies to the GFR stating that the project is ready for final inspection. Schedules inspection date.
3	Upon receipt of letter from Borrower's Engineer.	GFR	Advises borrower whether attending the final inspection will be possible.

STEP-BY-STEP PROCEDURE FOR CLOSEOUT OF CONSTRUCTION CONTRACT—Continued
[RUS Form 515]

Sequence		By	Procedure
Step No.	When		
4	By inspection date	Borrower's Engineer.	Obtains and makes available the following documents: a set of "as constructed" detail maps and (when applicable) "as built" key maps; a list of construction change orders; the final staking sheets; the tabulation staking sheets; the treated forest products inspection reports or certificates of compliance; the tentative final inventory, RUS Forms 724 and 724a; the tentative tabulation, RUS Form 231 (if borrower furnished part of material); and, a report of results of acceptance tests.
5	During inspection	Borrower's Engineer.	Issues instructions to contractor covering corrections to be made in construction as a result of inspection.
6	During inspection	Contractor	Corrects construction on basis of instructions from the borrower's engineer. The corrections should proceed closely behind the inspection in order that the borrower's engineer can check the corrections before leaving the system.
7	During inspection	Borrower's Engineer.	Inspects and approves corrected construction. Marks inspected areas on the key map, if available, otherwise on the detail maps.
8	Upon completion of inspection	Borrower's Engineer.	Prepares or obtains all the closeout documents listed in Table 3.
9	After signing final inventory	Borrower	Prepares and submits to RUS the engineer's certifications of completion and a Financial Requirement Statement, RUS Form 481, requesting amount necessary to make final payment due under contract.
10	On receipt of final advance	Borrower	Promptly forwards check for final payment to contractor.
11	During subsequent loan fund audit review following final payment.	RUS Field Accountant.	Examines borrower's construction records for compliance with the construction contract and Subpart F, and examines RUS Form 281 (Tabulation of Materials Furnished by Borrower) if any, for appropriate costs.

(iii) When the total inventory price exceeds the maximum contract by more than 20 percent, an extension to the contractor's bond is required.

(iv) The borrower shall submit the engineer's contract closeout certification with FRS for the final advance of funds.

(3) Final payment shall be made according to the payment provisions of article III of RUS Form 515, except that certificates and other documents required to be submitted to or approved by the Administrator shall be submitted to and approved by the Owner.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 59 FR 43717, Aug. 25, 1994; 64 FR 16609, Apr. 6, 1999]

§§ 1753.50–1753.55 [Reserved]

Subpart G—Outside Plant Major Construction by Force Account

SOURCE: 55 FR 3572, Feb. 2, 1990, unless otherwise noted. Redesignated at 55 FR 39397, Sept. 27, 1990.

§ 1753.56 General.

(a) This subpart implements and explains the provisions of the loan documents setting forth the requirements and the procedures to be followed by borrowers for outside plant major construction by the force account method with RUS loan funds. Terms used in this subpart are defined in §1753.2 and RUS Contract Form 515.

(b) A borrower shall not use the force account method for construction financed with loan funds unless prior RUS approval has been obtained.

(c) Generally, RUS will not approve the force account method for major

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outside plant construction for the initial loan to a borrower.

(d) The Force Account Proposals (FAPs) are subject to review and approval by RUS.

(e) The FAP is approved by RUS on the basis of estimated labor and material costs. The FAP is closed based on the borrower's actual cost of performing the construction. RUS will provide loan funds only up to the amount determined by the completed assembly units priced at the unit prices in the approved FAP.

(Approved by the Office of Management and Budget under control number 0572-0062)

§ 1753.57 Procedures.

(a) *The request.* (1) The borrower shall submit to RUS a certified copy of the board resolution or a letter signed by an authorized corporate official requesting approval to use the force account method of construction. The request shall state the advantages of the force account method of construction and provide the following information:

(i) The scope of the construction to be undertaken, stating briefly the facilities and equipment to be installed and other pertinent data.

(ii) The name and qualifications of the construction supervisor who will be directly in charge of construction, the names and qualifications of the construction foremen, and the availability of qualified construction personnel. The construction supervisor must have at least 5 years outside plant construction experience with at least 2 years at the supervisory level on RUS financed projects. Construction foremen must have at least 3 years of outside plant construction experience.

(iii) The availability of equipment for construction, exclusive of equipment needed for normal operation and maintenance.

(2) [Reserved]

(b) *Force Account Proposal (FAP).* Upon receiving RUS approval to use the force account method, the borrower, prior to any construction activity or the purchase of materials or equipment, shall submit to RUS two copies of its FAP. The FAP shall consist of:

(1) The RUS Contract Form 515 and appropriate supporting attachments

that normally would be provided as plans and specifications for contract construction. See §1753.47.

(2) The cost estimate, using Form 515 as a convenient means of showing the following:

(i) The quantity and cost estimates of the various assembly units required. "Labor and other" cost will not include the cost of engineering, legal, and other professional services, interest during construction, preliminary survey and investigation charges, and right-of-way easement procurement costs.

(ii) A list identifying materials or construction for which loan funds will not be requested.

(3) The estimated completion time.

(c) *Storage of materials.* All materials ordered for the construction shall be stored separate from normal maintenance materials.

(d) *Construction—(1) Preconstruction conference.* The borrower shall arrange a conference, attended by the manager, construction supervisor, construction foremen, resident engineer and the GFR prior to the beginning of construction to clarify any questions pertaining to the construction. Notes of the conference shall be provided to each conference participant.

(2) *Construction schedule and progress reports.* The borrower shall obtain from the engineer a construction schedule and submit one copy to the GFR. The schedule shall include the starting date and a statement indicating that materials are either delivered or deliveries are assured to permit construction to proceed in accordance with the construction schedule. The borrower shall obtain from the engineer progress reports and submit one copy of each to the GFR. RUS Form 521 may be used for the construction schedule and the progress report.

(3) *Borrower's management responsibilities.* (i) Obtain all right-of-way easements, permits, etc., prior to construction.

(ii) Maintain records on all expenditures for materials, labor, transportation, and other costs of construction, in order that all costs may be fully accounted for upon completion of construction.

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(iii) Ensure that all the required inspections and tests are made.

(4) *Engineer's responsibilities.* (i) Inspect and inventory construction as completed.

(ii) Require timely corrections and cleanup.

(iii) Perform acceptance tests as construction is completed.

(iv) Provide "as built" staking sheets of completed construction when the final inspections are made.

(v) Maintain accurate and current inventories of completed construction.

(5) *Construction supervisor's responsibilities.* (i) Correct construction errors as construction progresses.

(ii) Maintain an accurate inventory of completed construction.

(iii) Perform cleanup as construction is completed.

(iv) Perform all the inspections and acceptance tests a contractor would be required to make under the construction contract.

(v) Promptly perform cleanup required after final inspection.

§ 1753.58 Closeout documents.

(a) *General.* (1) This section outlines the procedure to be followed in the preparation of closeout documents for the FAP.

(2) The period between the completion of construction and submission of the closeout documents to RUS should not exceed 60 days.

(b) *Documents.* The documents required to close the FAP are listed in the following table. The following is a brief description of the closeout documents:

DOCUMENTS REQUIRED TO CLOSE OUT FORCE ACCOUNT OUTSIDE PLANT CONSTRUCTION

RUS Form No.	Description
817, 817a, 817b	Final Inventory Force Account Construction and Certificate of Engineer. Submit one copy to RUS, if required ¹
213	Certificate—"Buy American" (as applicable from each supplier).
None	Detail Maps.
None	Key map, if applicable.
None	Staking Sheets.
None	Tabulation of staking sheets.
None	Treated Forest Products Inspection Reports or Certificates of Compliance (prepared by inspection company or supplier).

¹ RUS Forms 817, 817a, and 817b are to be submitted to GFR only if required in paragraph (c)(5) of this section. Otherwise, the final inventory documents are to be assembled and retained by the borrower for at least two years.

(c) *Closeout procedures.* (1) The borrower shall notify the GFR when the project is ready for final inspection.

(2) The GFR shall be invited to make the final inspection accompanied by the engineer and the borrower.

(3) The borrower shall correct all deficiencies found during the final inspection.

(4) The borrower may request the assistance of an RUS field accountant to review the borrower's record of construction expenditures and assist the borrower with any accounting problems in connection with construction expenditures.

(5) After inspection, the final inventory documents shall be assembled as indicated in the table in this section. RUS Forms 817, 817a, and 817b are to be submitted to GFR only if the amount of the closeout exceeds the original

force account proposal by 20% or more. Otherwise, the final inventory documents are to be assembled and retained by the borrower for at least two years.

(6) Upon approval of the closeout documents, RUS will notify the borrower of approval and of any adjustments to be made in funds advanced in connection with the construction.

(d) The above are not intended to be a complete description of the requirements of the documents relating to RUS's closeout procedure. Refer to the documents for additional requirements.

[55 FR 3572, Feb. 2, 1990. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 64 FR 16610, Apr. 6, 1999]

§§ 1753.59–1753.65 [Reserved]

Subpart H—Purchase and Installation of Special Equipment

SOURCE: 54 FR 39267, Sept. 25, 1989, unless otherwise noted. Redesignated at 55 FR 39397, Sept. 27, 1990.

§ 1753.66 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing special equipment financed with loan funds.

(b) Terms used in this subpart are defined in §1753.2 and RUS Contract Forms 397 and 398.

(c) Special equipment purchased with loan funds must be included in the List of Materials Acceptable for Use on Telephone Systems of RUS Borrowers (See Bulletin 344-2) and meet RUS's standards and specifications (See 7 CFR part 1755) unless otherwise approved by RUS.

(d) Borrowers must obtain RUS review and approval of the LD for their telephone systems. Applications of special equipment not included in an approved LD must conform to the modernization plan as required by 7 CFR part 1751, subpart B, and must be submitted to RUS for review and approval.

(e) RUS Form 397 and applicable specifications shall be used for the purchase of special equipment for major construction on a furnish and install basis.

(f) RUS Form 398 and applicable specifications shall be used for the purchase of equipment for major construction on a furnish only basis. The procedures provided in subpart I, if applicable, or a FAP approved by RUS may be used for the installation of special equipment purchased with a Form 398 contract.

(g) For special equipment purchases for minor construction, the borrower may at its option use the Methods of Minor Construction procedures contained in subpart I or the purchase procedures contained in this subpart H.

(h) Some types of special equipment contain software. See subpart E for RUS software licensing requirements.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 58 FR 66259, Dec. 20, 1993; 59 FR 17464, Apr. 13, 1994]

§ 1753.67 Contracts and specifications.

(a) Special Equipment Contract, RUS Form 397 shall be used to purchase equipment on a furnish and install basis.

(b) Special Equipment Contract, RUS Form 398 shall be used to purchase equipment on a furnish only basis.

(c) The equipment specifications must accompany the selected contract form.

(1) Each specification consists of performance specifications, installation requirements (if applicable) and application engineering requirements.

(2) RUS specifications for the Special Equipment Contract are listed in 7 CFR part 1755.

§ 1753.68 Purchasing special equipment.

(a) *General.* (1) Equipment purchases are categorized as initial equipment purchase, equipment additions to existing systems and new system additions.

(i) An initial equipment purchase is a first time purchase by a borrower of a complete system of special equipment.

(ii) Equipment additions to existing systems are additions of components to complete operating systems to increase system capacity that require components made by the manufacturer of the existing system.

(iii) New system additions are purchases of complete systems of special equipment when the purpose can be accomplished either with equipment of the same type and manufacture as other complete operating systems in the borrower's system, or with complete systems of special equipment from other manufacturers.

(iv) Where equipment is obtained under a Form 398 Contract, the borrower shall require the supplier to provide a detailed proposed bonding and

grounding plan and detailed installation information. The installation information is to enable acceptance testing by the borrower upon completion of the installation.

(2) For initial equipment purchases that qualify as major construction, the borrower shall obtain proposals from at least three suppliers of equipment of different manufacturers.

(3) For equipment additions to increase the capacity of existing systems, the borrower may negotiate for equipment of a specific type and manufacture. RUS approval to negotiate in this instance is not required if these additions were specifically described in the LD approved by RUS.

(4) For new system additions, the borrower may request RUS approval to negotiate for additional equipment for the purpose of standardization on a system basis, provided RUS approved the procurement method used for the initial equipment purchase. RUS approval to negotiate must be obtained before release of the P&S to the seller.

(5) RUS will not approve negotiation with a seller of non-domestic equipment for the purpose of standardization, because such a purchase does not meet the "Buy American" provision.

(6) RUS recommends, but does not require, that borrowers include installation by the seller for initial installations of special equipment that qualify as major construction.

(7) Special equipment may be installed by the borrower if it has qualified personnel and test equipment available to install the equipment and make the required acceptance tests, and written approval is given by RUS.

(8) Installations, whether by the borrower or the seller, must meet the installation requirements of Form 397 specifications. A copy of the acceptance tests results must be attached to the closeout documents or work order summary.

(9) Detailed considerations and guidelines for the preparation of the specifications for the various applications of special equipment can be found in RUS Telecommunications Engineering and Construction Manuals.

(10) The borrower must obtain authorization from the Federal Communications Commission (FCC) to con-

struct and operate radio transmitting equipment. Evidence of FCC authorization is required for RUS contract approval. Where required, the borrower must obtain approval of state regulatory bodies regarding tariffs and related matters.

(b) *Procurement procedures*—(1) *General*. The following are the procurement procedure steps required for the purchase of special equipment by borrowers.

(2) *Initial equipment purchase*. (i) The borrower prepares P&S and, for projects estimated to exceed \$500,000 or 25% of the loan, whichever is less, sends two copies to GFR for approval.

(ii) For projects estimated to exceed \$500,000 or 25% of the loan, whichever is less, RUS will either approve P&S in writing or notify the borrower of the reasons for withholding approval.

(iii) For projects estimated to cost less than \$500,000 or 25% of the loan, whichever is less, the borrower may proceed with procurement upon completion of the P&S.

(iv) If the borrower has employed full competitive bidding in the selection, a contract may be executed with the successful bidder and the borrower may proceed to paragraph (b)(2)(vi) of this section.

(v) If the borrower did not follow a fully competitive bidding process as described in §1753.8, the selection, along with a summary of all proposals and an engineer's recommendation, shall be sent to RUS. RUS shall approve the proposal selection in writing or notify the borrower of any reason for withholding approval.

(vi) The borrower sends three executed contracts including specifications to RUS for approval.

(vii) After RUS approval of the contract, one copy will be returned to the borrower and one copy will be sent to the seller.

(3) *Equipment additions to existing systems*. Purchase procedures for equipment additions to existing systems are the same as for initial system purchase except that the borrower may negotiate for equipment of a specific type and manufacture instead of obtaining proposals from three or more sellers.

(4) *New system additions*. (i) The borrower prepares the P&S and, if the

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project is estimated to exceed \$500,000 or 25% of the loan, whichever is less, sends two copies to the GFR for approval. The borrower may request RUS approval to negotiate for the purpose of standardization on a system basis prior to preparing the P&S.

(ii) RUS notifies the borrower in writing as to whether the borrower may negotiate for specific equipment. If P&S were required to be submitted to RUS under paragraph (b)(4)(i) of this section, RUS notifies the borrower in writing of P&S approval (or notifies the borrower of the reasons for withholding approval).

(iii) The remainder of the purchase procedure for new system additions is the same as for initial equipment purchase.

(c) *Contract amendments.* (1) The general requirements for contract amendments are set forth in §1753.11.

(2) The borrower shall prepare any required amendments to the special equipment contract, arrange for the execution by all parties, and submit these amendments to RUS in accordance with §1753.11(d). RUS Form 238, Construction or Equipment Contract Amendment, shall be used for this purpose.

(d) *Closeout procedures*—(1) *Acceptance tests for Form 397.* (i) Immediately upon

completion of the installation and alignment of the equipment, the borrower shall arrange with the contractor's installer and the GFR for acceptance tests.

(ii) The borrower shall obtain from the contractor, in writing, the results of all inspections and tests made by the contractor as required in the specifications. The borrower will analyze the test results and determine whether the performance of the equipment meets the contract specifications.

(2) *Acceptance tests for Form 398.* (i) Upon completion of the installation and alignment of the equipment (under this contract the installation alignment will be by other than the seller) the borrower shall perform all the inspections and tests outlined in the specifications.

(3) *Closeout documents.* When the acceptance tests have been completed and all deficiencies have been corrected, the borrower:

(i) Assembles and distributes the documents listed in the following table that are required for the closeout of the special equipment contract. The documents listed for RUS shall be retained by the borrower for inspection by RUS for at least two years from the date of the engineer's contract closeout certification.

DOCUMENTS REQUIRED TO CLOSE OUT SPECIAL EQUIPMENT CONTRACTS
[RUS Forms 397 and 398]

RUS Form No.	Description	No. of copies prepared by			Engineer	Distribution	
		Form 397	Form 398	Contractor		Borrower	Contractor
238	Construction or Equipment Contract Amendment (if not previously submitted, send to RUS for approval).	.....	(3)	.....	(3)	(to RUS)	(to RUS)
396	Certificate of Completion—Special Equipment Contract (Including Installation).	.....	2	.....	.....	1	1
396a	Certificate of Completion—Special Equipment Contract (Not Including Installation).	.....	.....	.....	2	1	1
744	Certificate of Contractor and Indemnity Agreement.	1	.....	.....	.....	1	.....
213	Certificate (Buy American).	1	.....	1	.....	1	.....

DOCUMENTS REQUIRED TO CLOSE OUT SPECIAL EQUIPMENT CONTRACTS—Continued
[RUS Forms 397 and 398]

RUS Form No.	Description	No. of copies prepared by			Engineer	Distribution	
		Form 397	Form 398	Contractor		Borrower	Contractor
None	Report in writing, including all measurements and other information required under Part II of the applicable specifications.	1	.....	.....	1	1	.....
None	Set of maintenance recommendations for all equipment furnished under the contract.	1	.....	1	.....	1	.....

(ii) Obtains certifications from the engineer that the project and all required documentation are satisfactory and complete. Requirements for this contract closeout certification are contained in §1753.18.

(iii) Submits copies of the engineer's certifications to RUS with the FRS requesting the remaining funds on the contract.

(iv) Makes final payment in accordance with the payment terms of the contract.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 59 FR 43718, Aug. 25, 1994; 64 FR 16611, Apr. 6, 1999]

§§ 1753.69–1753.75 [Reserved]

Subpart I—Minor Construction

SOURCE: 55 FR 3573, Feb. 2, 1990, unless otherwise noted. Redesignated at 55 FR 39397, Sept. 27, 1990.

§ 1753.76 General.

(a) This subpart implements and explains the provisions of the Loan Documents containing the requirements and procedures to be followed by borrowers for minor construction of telecommunications facilities using RUS loan funds. Terms used in this subpart are defined in §1753.2.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0572-0062)

[55 FR 3573, Feb. 2, 1990. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 64 FR 16611, Apr. 6, 1999]

§ 1753.77 Methods of minor construction.

Minor construction may be performed by contract using RUS Contract Form 773, "Miscellaneous Construction Work and Maintenance Services", by RUS Contract Form 515, or by work order construction. The rules for using Form 515 for minor construction are contained in subpart F of this part.

[64 FR 16612, Apr. 6, 1999]

§ 1753.78 Construction by contract.

(a) RUS Form 773 shall be used for minor construction by contract. Compensation may be based upon unit prices, hourly rates, or another basis agreed to in advance by the borrower and the contractor. A single work project may require more than one contractor.

(b) The borrower shall prepare the contract form and attach any diagrams, sketches and tabulations necessary to specify clearly the work to be performed and who shall provide which materials. Neither the selection of the contractor nor the contract requires RUS approval.

(c) Borrowers are urged to obtain quotations from several contractors before entering into a contract to be assured of obtaining the lowest cost. The

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borrower must ensure that the contractor selected meets all Federal and State licensing and bonding requirements, and that the contractor maintains the insurance coverage required by the contract for the duration of the work. (See 7 part CFR 1788)

(d) Upon completion and final inspection of the construction the borrower shall obtain from the Contractor a final invoice and an executed copy of RUS Form 743, Certificate of Contractor and Indemnity Agreement.

(e) RUS Contract Form 773 may also be used to contract for the maintenance and repair of telephone equipment and facilities. Generally, RUS will not finance maintenance and repair contracts.

[55 FR 3573, Feb. 2, 1990. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 59 FR 43718, Aug. 25, 1994]

§ 1753.79 Construction by force account.

The borrower shall require that:

(a) Minor construction by the force account method be supervised by a competent foreman. The work shall be performed in accordance with all regulatory and safety codes.

(b) Daily time and material reports, referenced by the work project number, shall be kept to record labor and materials used as construction is performed.

(c) The construction foreman shall maintain a tabulation of all construction units installed.

§ 1753.80 Minor construction procedure.

(a) If the borrower performs minor construction financed with loan funds, the borrower's regular work order procedure shall be used to administer construction activities that may be performed entirely by a contractor under Form 773 contract, by work order, or jointly by work order and one or more contractors under Form 773 contracts.

(b) RUS financing under Form 773 contracts dated in the same calendar year is limited to the following amounts for the following discrete categories of minor construction. The date of the Form 773 contract is the date the Form 773 contract is executed.

(1) For outside plant construction, the limit is \$500,000 or ten per cent

(10%) of the borrower's previous calendar year's outside plant total construction, whichever is greater.

(2) For central office equipment, the limit is \$500,000.

(3) For special equipment and buildings, the limit is \$250,000 in each category.

(c) A single minor construction project may be a discrete element of a somewhat larger overall project, such as the provision and installation of a standby power generator or heating/air conditioning equipment in connection with a building modification or expansion project or the splicing on a major cable placement project. It cannot be a portion, by dividing into smaller segments, of a discrete major construction project, such as the placement of a continuous cable facility.

(d) RUS approval must be obtained in advance for minor construction unless all of the following conditions are met:

(1) RUS has approved the engineering design.

(2) All standard RUS procedures are followed, including use of new materials listed in the List of Materials for Use on Telephone Systems of RUS Borrowers (Bul. 344-2) and the application of RUS construction practices. (See § 1753.6)

(3) The Standard Form 773 contract is used without modification.

(e) The borrower shall determine the scope of each proposed construction project and decide how it will be constructed. A work project number shall be assigned to which all charges for that project are referenced.

(f) The borrower shall maintain accounting and plant records sufficient to document the cost and location of all construction and to support loan fund advances and disbursements.

(g) Normally the borrower will finance minor construction with general funds and obtain reimbursement with loan funds when construction is completed and executed Form 771 has been submitted to RUS. If a borrower satisfies RUS of its inability to finance the construction temporarily with general funds, RUS may establish, on a case by case basis, a work order fund for specific construction projects. The work order fund will be closed upon receipt of an FRS and the executed Forms 771

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for the specific projects for which the work order fund was established.

(h) RUS will advance funds to finance minor construction work projects only if all necessary documents, including an FRS and supporting data covering the project, are received within one year of the date construction of the project is completed.

[55 FR 3573, Feb. 2, 1990. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 59 FR 43718, Aug. 25, 1994; 64 FR 16612, Apr. 6, 1999]

§ 1753.81 Inspection and certification.

(a) Upon completion and prior to closeout, minor construction must be inspected and certified to be in compliance with RUS construction standards, to be reasonable in cost, and to meet applicable codes. The certification is made by an experienced telephone engineer who is either licensed in the state where the inspection will be performed, or is a borrower's staff engineer, who meets the requirements of the "employee in charge" of force account engineering as described in subpart B of this part. The GFR will periodically audit the inspection of minor construction to ensure integrity of the procedure. RUS borrowers with less than 2000 subscribers may use the above procedure or have construction inspection performed by the GFR.

(b) Engineering services for minor construction may be contracted using RUS Form 245, Engineering Service Contract—Special Services. Costs for these services may be included in the costs for construction on the Form 771. (See subpart B of this part.)

(c) Upon completion of construction, the borrower shall obtain the engineer's certification on RUS Form 771. An official of the borrower, designated by the board of directors, shall also execute the borrower's certification on Form 771.

[54 FR 39267, Sept. 25, 1989. Redesignated at 55 FR 39397, Sept. 27, 1990, as amended at 55 FR 53488, Dec. 31, 1990]

§ 1753.82 Minor construction closeout.

(a) For minor construction inspected by the borrower's engineer, an original and two copies of Form 771 shall be sent to the GFR. The GFR will initial and return the original and one copy.

(b) When funds are requested for minor construction, the original Form 771 signed or initialed by the GFR, shall be submitted with the FRS. Forms 771 should be submitted only with the FRS which they support. RUS does not encumber funds pursuant to Forms 771 unless an advance is made to the borrower. (See 7 CFR part 1744 subpart C).

§§ 1753.83–1753.90 [Reserved]

Subpart J—Construction Certification Program

SOURCE: 55 FR 3574, Feb. 2, 1990, unless otherwise noted. Redesignated at 55 FR 39397, Sept. 27, 1990.

§ 1753.91 General.

(a) This subpart implements and explains the provisions of the loan documents setting forth the requirements and procedures to be followed by borrowers accepting nomination for the construction certification program. Terms used in this subpart are defined in § 1753.2.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0572-0062)

§ 1753.92 Policies and requirements.

(a) It is RUS policy that, as borrowers gain in experience and maturity, the advice and assistance rendered by RUS shall progressively diminish. Prior to approval of a loan, RUS may nominate certain borrowers to fulfill the responsibilities for administration and construction of projects financed with RUS loans. Borrowers who accept this nomination will be known as "certification borrowers," and the program in which they participate will be known as the "certification program."

(b) Generally, initial loan borrowers are not eligible for the certification program.

(c) Generally, the factors which RUS will consider in selecting borrowers for the certification program will include:

(1) The experience of the staff of the borrower.

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(2) The RUS assessment of the borrower's ability to handle the certification program requirements considering the size and complexity of the proposed construction in the LD.

(3) The history of the borrower in following RUS's policies and procedures.

(4) Other factors deemed relevant by RUS.

(d) Except as specifically stated in this subpart, certification borrowers must comply with all requirements applicable to other borrowers.

(e) RUS reserves the right at any time to require submission of construction documents or to remove the borrower from the certification program.

§ 1753.93 Responsibilities.

(a) *Responsibilities transferred to certification borrowers.* (1) Approval of engineering and architectural service contracts.

(2) Approval of P&S.

(3) Approval of price quotations and bids, except where the low price bid is not accepted.

(4) Approval of award of construction contracts and amendments.

(5) Approval of FAP's if RUS has approved the force account method of construction for the construction project.

(6) Inspection and certification of construction.

(7) Approval of closeout documents.

(8) Other responsibilities as may be specifically granted in writing by RUS.

(b) *Responsibilities retained by RUS.* (1) Approval to deviate from RUS requirements, except as provided in (a) above.

(2) Approval of use of loan funds for projects other than those included in the loan construction budget. See 7 CFR part 1744 subpart C.

(3) Approval of use of loan funds in excess of amounts included in the loan budget.

(4) Approval of force account methods of engineering and construction.

(5) Approval to make significant deviations from the work plan approved by RUS.

(6) Approval of interim construction.

(7) Approval to use materials not listed in the List of Materials Acceptable for Use on Telephone Systems of RUS Borrowers.

(8) Approval of field trials.

(9) Approval to modify or alter standard forms and contracts.

(10) Approval to open bids when fewer than the required number have been received.

(11) Approval of outside plant layouts.

(12) "Buy American" determinations.

(13) Other responsibilities not specifically transferred by this subpart or in writing by RUS.

§ 1753.94 Procedures.

(a) Certification borrowers shall appoint three certification officials. These appointments shall be subject to RUS approval.

(1) The "Certifying Officer" shall be an officer or employee of the borrower who is authorized to execute binding agreements. This officer shall sign all contracts, amendments, closeout documents and the certification on RUS Form 158, Certification of Contract or Force Account Proposal Approval, and RUS Form 159, Summary of Completed Construction.

(2) The "Construction Certifier" shall be an experienced telephone engineer who is either licensed in the state where the inspection will be performed, or is a borrower's staff engineer who meets the requirements of the "employee in charge" of force account engineering as described in subpart B of this part. RUS may determine that it will accept the certification only for matters within the staff engineer's area of specialization. In such cases the position of "Construction Certifier" shall be filled by more than one engineer. This official is responsible for certifying that the construction complies with all technical and code requirements.

(3) The "Certification Coordinator" shall administer the certification program and serve as the official point of contact for RUS. The certifying officer or construction certifier may also serve as the certification coordinator.

(b) Certification borrowers, shall submit and obtain RUS approval of a work plan before construction and related engineering begin.

(1) The work plan shall provide a description of the proposed construction and methods of purchasing in such detail as to enable RUS to monitor the

construction program to ensure to its satisfaction that loan purposes are accomplished in an organized construction program.

(2) The work plan shall include the following:

(i) The names and qualifications of the proposed certification officials defined in §1753.94(a).

(ii) A listing of the proposed work projects to accomplish the loan purposes showing the estimated cost, method of performing the construction, and the proposed commencement and completion dates for each work project. The proposed work projects shall be summarized on RUS Form 157, Construction Work Plan and Cost Distribution, or a form providing essentially the same information.

(iii) The proposed source of funds for meeting cost overruns if the total estimated cost of work projects exceeds the loan budget.

(iv) A statement signed by the borrower's certification officials and the GFR that the work plan is accurate and complete.

(c) Under the certification program, the borrower shall follow all standard RUS postloan engineering and construction procedures except that the approvals shown in §1753.93(a) will be made by certification officials rather than RUS. The approvals noted in §1753.93(a)(1), (4) and (5) will be reported immediately to RUS using RUS Form 158. Approval of closeouts, §1753.93(a) (6) and (7), will be reported immediately on RUS Form 159.

(d) As the construction program progresses, the certification borrower shall request, by letter, RUS approval of any significant changes in work plan schedules and budgets and in certification officials.

§ 1753.95 Advance of loan funds.

Advance of loan funds needed to meet the certification borrower's current financial obligations are to be requested on RUS Form 481 for construction and engineering items supported by appropriate RUS Forms 158 and 159. For items other than construction or engineering, other supporting data shall be submitted. (See 7 CFR part 1744 subpart C.)

§ 1753.96 Certification addendum.

The certification borrower shall modify standard RUS forms of contract for use under the certification program by inserting an executed copy of the following certification addendum in each copy of the contract.

CERTIFICATION ADDENDUM

Permission has been obtained by the Owner to proceed with this contract under 7 CFR part 1753 subpart J, pursuant to which the references in the RUS construction document requiring approvals and other actions of the RUS Administrator will not apply unless RUS gives specific notice in writing to the affected parties that designated approval(s) or action(s) will be required. Certifications by the Contractor of amounts due and certifications of completions of work under the contract are to be construed to be rendered for the purpose of inducing the Rural Utilities Service or Rural Telephone Bank to advance funds to the Owner to make, or reimburse the Owner for, payments under this contract.

Date _____
 Owner _____
 By _____
 Certifying Officer _____
 Date _____

Contractor _____
 By _____
 Title _____

§§ 1753.97-1753.99 [Reserved]

PART 1755—TELECOMMUNICATIONS POLICIES ON SPECIFICATIONS, ACCEPTABLE MATERIALS, AND STANDARD CONTRACT FORMS

- Sec.
- 1755.1-1755.2 [Reserved]
- 1755.3 Field trials.
- 1755.4-1755.25 [Reserved]
- 1755.26 RUS standard contract forms.
- 1755.27 Borrower contractual obligations.
- 1755.28 Notice and publication of listed contract forms.
- 1755.29 Promulgation of new or revised contract forms.
- 1755.30 List of telecommunications standard contract forms.
- 1755.31-1755.96 [Reserved]
- 1755.97 Incorporation by reference of telecommunications standards and specifications.
- 1755.98 List of telecommunications specifications included in other 7 CFR parts.