

project costs of \$200,000 or less, 5 points will be awarded.

(8) *Previous grantees and borrowers.* If an applicant has not been awarded a grant or loan under this program within the 2 previous Federal fiscal years, 5 points will be awarded.

(9) *Return on investment.* If the proposed project will return the cost of the investment in less than 4 years, 10 points will be awarded; 4 years up to but not including 8 years, 4 points will be awarded; or 8 years up to 11 years, 2 point will be awarded.

§ 4280.113 Insurance requirements.

Agency approved insurance coverage must be maintained for the life of the grant unless this requirement is waived or modified by the Agency in writing.

(a) National flood insurance is required in accordance with 7 CFR part 1806, subpart B, of this title, if applicable.

(b) Business interruption insurance is required except for projects with total eligible project costs of \$200,000 or less.

§ 4280.114 Laws that contain other compliance requirements.

(a) *Equal employment opportunity.* For all construction contracts and grants in excess of \$10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant is responsible for ensuring that the contractor complies with these requirements.

(b) *Equal opportunity and non-discrimination.* The Agency will ensure that equal opportunity and non-discriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR 15d, Non-discrimination in Programs and Activities, conducted by USDA. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from public assistance program; or to the fact that the applicant has in good faith exercised any

right under the Consumer Credit Protection Act.

(c) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This may include collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR part 1901, subpart E, §1901.204 of this title. Initial reviews will be conducted after Form RD 400-4 is signed and all subsequent reviews every 3 years thereafter for loans. The last review shall occur 3 years after the date of loan closing. Grants will require one subsequent compliance review after the last disbursement of grant funds have been made, and the facility has been in full operation for 90 days.

(d) *Environmental analysis.* Subpart G of part 1940 of this title outlines environmental procedures and requirements for this subpart. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly or indirectly available through the Agency.

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds.

(2) The applicant will be notified of all specific compliance requirements, including, but not limited to, the publication of public notices, and consultation with State Historic Preservation Offices and the U.S. Fish and Wildlife Service.

(3) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review.

(4) The applicant taking any actions or incurring any obligations during the time of application or application review and processing that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction, will result in project ineligibility.

(e) *Executive Order 12898*. When a project is proposed and financial assistance requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. The CRIA must be conducted and the analysis documented utilizing Form RD 2006–38, “Civil Rights Impact Analysis Certification.” This certification must be done prior to loan approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions or Form RD 4279–3 of guarantee, whichever occurs first.

(f) *Uniform Federal assistance regulations*. Grants will be administered in accordance with 7 CFR part 3015 of this title.

§ 4280.115 Construction planning and performing development.

The requirements of this section apply for planning, designing, bidding, contracting, and constructing renewable energy systems and energy efficiency improvement projects as applicable. For contracts of \$200,000 or less, the simple contract method, as specified in paragraph (e) of this section, may be used. Contracts greater than \$200,000 shall use the contract method specified in paragraph (g) of this section.

(a) *Technical services*. Applicants are responsible for providing the engineering, architectural, and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the applicant’s “in-house” engineer or architect or through contract, subject to Agency concurrence. Engineers and architects must be licensed in the State where the facility is to be constructed.

(b) *Design policies*. Facilities funded by the Agency will meet the requirements of 7 CFR subpart C of part 1780, § 1780.57(b), (c), (d), and (o) of this title. Final plans and specifications must be reviewed by the Agency and approved prior to the start of construction.

(c) *Owners accomplishing work*. In some instances, owners may wish to perform a part of the work themselves. For an owner to perform project development work, the owner must meet the experience requirements of 7 CFR sub-

part C of part 1780, § 1780.67 of this title. For an owner to provide a portion of the work, with the remainder to be completed by a contractor, a clear understanding of the division of work must be established and delineated in the contract. In such cases, the contractor will be required to inspect the owner’s work and accept it. Owners are not eligible for payment for their own work as it is not an eligible project cost. See § 4280.110(c) of this subpart for further details on eligible project costs.

(d) *Equipment purchases*. Equipment purchases of less than \$200,000 will not require a performance and payment bond, unless required by the applicant, as long as the contract purchase is a lump sum payment and the manufacturer provides the required warranties on the equipment as outlined in paragraph (i) in the applicable section found in Appendices A and B of this subpart. Payment shall be certified by copies of the Manufacturer’s paid invoices and warranty documents.

(e) *Simple contract method*. The simple contract method may be used for small projects with a contract not greater than \$200,000. In smaller projects, Agency funds will typically be used to reimburse project costs upon completion of the work as a lump sum payment. Partial payments will be made in accordance with Form RD 4280–2, “Grant Agreement,” and Form RD 1924–6, “Construction Contract,” or other Agency approved contract. All construction work will be performed under a written contract, as described below. A design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used under this method.

(1) *Contracting requirements threshold*. For contracts above \$100,000, certain Federal requirements, including surety, must be met. An attachment to the contract may be used to incorporate language for these requirements.

(2) *Forms used*. Form RD 1924–6 or other Agency approved contract must be used. Other contracts must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the