

**§ 1789.152**

**7 CFR Ch. XVII (1-1-12 Edition)**

*Consultant* means a person or firm which has been retained pursuant to this subpart under a contract to provide financial, legal, engineering, environmental, or other technical advice and services.

*Consultant Contract* means a contract for the performance of consulting services for RUS, to be paid using funds provided by a Borrower, which may be in the form of a Retainer Contract, purchase order, or other form as may be appropriate.

*Escrow Account* means an account established pursuant to §1789.158.

*Escrow Agreement* means an agreement, between a Borrower, a Consultant and a Third-party Commercial Institution, meeting the requirements of §1789.167.

*Final Invoice* means the closing Invoice prepared for a given Task Order.

*Financial Consultant* means a Consultant retained pursuant to this part to provide financial advisory services.

*Funding Agreement* means an agreement, between a Borrower and a Consultant, providing for the Borrower to fund the costs of a Task Order and otherwise meeting the requirements of §1789.166.

*Indemnification Agreement* means an agreement by a Borrower meeting the requirements of §1789.162.

*Invoice* means an invoice prepared by a Consultant pursuant to the terms of a Consultant Contract.

*Legal Consultant* means any Consultant retained pursuant to this part to provide legal services to RUS.

*Notice of Proposal to Fund* means a notice meeting the requirements of §1789.156 provided to RUS by the Borrower.

*Organizational conflict of interest* means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

*Retainer Contract* means a Consultant Contract providing for a minimum required payment to a Consultant irrespective of whether services are utilized by RUS thereunder.

*Task Order* means a written request for consultant services pursuant to the terms of a Consultant Contract.

*Third-party Commercial Institution* means a commercial financial institution mutually acceptable to the Borrower and the Consultant.

**§ 1789.152 Policy.**

(a) As provided in this subpart, RUS may, at its discretion, use the services of Consultants funded by a Borrower where such services will facilitate timely action on an Application by such Borrower for financial assistance or other approvals. Such Consultants may provide financial, legal, engineering, environmental or other technical advice and services in connection with the review of an Application.

(b) With the approval of RUS, a Borrower may fund the cost of consulting services in connection with the review by RUS of an Application by such Borrower. Such funding shall be provided pursuant to the terms of a Funding Agreement between the Borrower and the Consultant designated by RUS.

(c) RUS may not, without the consent of the Borrower, require, as a condition of processing any Application for approval, that the Borrower agree to pay the costs of a Consultant hired to provide services to RUS.

(d) The government shall retain sole discretion in the selection of Consultants to provide services to RUS and the form of contract utilized. RUS may either use the services of one or more Consultants retained under Retainer Contracts or the government may elect to retain a Consultant not otherwise on retainer. The government shall have sole discretion to prescribe terms and conditions of Consultant Contracts. The Borrower may bring considerations to the attention of the government which the Borrower deems pertinent to the selection process.

(e) RUS shall retain sole discretion as to whether to further pursue use of an outside consultant for the relevant application in the event the Borrower does not enter into the agreements referenced in §1789.158(c)(3)(iii) within 60 days of the government providing to the Borrower the information set forth in §1789.158(c)(3).