



Broadband Initiatives Program

Contracting, Work Order and Advance
Procedures



I. General Contract Provisions

- All work must conform to the application as approved by RUS



I. General Contract Provisions

- Interim construction
 - Defined as work that commenced after submission of Application
 - Must comply with RUS “BIP Contracting, Work Order and Advance Procedure Guide”, including equal employment opportunity requirements (RUS Bulletin 320-15) and environmental requirements (7 CFR 1794)
- Environmental requirements (7 CFR 1794):
 - Construction must not commence until environmental requirements have been met



I. General Contract Provisions

- Non-standard contract
 - Must include a provision that the contract will not be binding on the parties until RUS approval is given
 - RUS will not approve Non-Standard Contract if:
 - The contract is for work not covered in the approved application, or is not for an Eligible Purpose;
 - The contract terms and conditions, are vague, inadequate, or unreasonable; or
 - The contract presents unacceptable loan security risk to RUS



I. General Contract Provisions

- RUS approval is required for contract amendments:
 - Changes in the scope of the project
 - Changes in the terms and conditions of the contract
 - Increase in contract price by 20% or more
 - Bond extension may be required
 - Increase in contract price necessitate a performance bond (>\$250,000)



I. General Contract Provisions

- Contract insurance requirements (7 CFR Part 1788, Subpart C)
 - Workers' compensation and employers' liability insurance
 - Public liability insurance
 - Automobile liability insurance on all motor vehicles used in connection with the contract
 - Installation floater policy



I. General Contract Provisions

- Contractor's bond (7 CFR Part 1788.49) required for:
 - Construction of facilities exceeding \$250,000
 - Equipment contract with installation exceeding \$250,000
 - If the cost of installation is 20% or less than the cost of equipment, contractor's bond is not required. In this case, construction such as grounding field, construction of towers, earth station antennas, placement of equipment huts, or site work such as driveways, etc., or other related construction works can not be included as part of the contract.
 - See more detail at http://www.usda.gov/rus/telecom/publications/pdf_files/Contractors-Bond-Requirement7-28-09.pdf

Surety companies providing contractors' bonds must be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570 (<http://www.fms.treas.gov/c570/c570.html>)



I. General Contract Provisions

- Title clearance
 - Required for building construction over \$250,000
 - Evidence of title clearance must be approved by RUS before approval of contract
- Software license
 - Use RUS Form 390 (Software License Agreement) or a non-standard contract



I. General Contract Provisions

- Buy American requirement
 - Not applicable to non-public entities
 - Applicable to public work and public buildings only
 - The Buy American requirement only applies if facilities and buildings are owned by an applicant that is a public entity, government agency, instrumentality, municipality, public-private partnership, etc.
 - Buy American waiver for public entities is limited to:
 - Broadband switching equipment
 - Broadband routing equipment
 - Broadband transport equipment
 - Broadband access equipment
 - Broadband customer premises equipment
 - End user devices
 - Billing/operations systems
 - See [74 Fed. Reg. 31402](#)



I. General Contract Provisions

- Awardees are not required to purchase materials that are listed on the RUS List of Materials



I. General Contract Provisions

- Davis-Bacon Act
 - Applicable to construction, alteration or repair of buildings and work (public and nonpublic) in excess of \$2,000
 - Does not apply to employees and contracts for non-ARRA funded projects
 - Contracts/subcontracts that are subject to the Davis-Bacon act prevailing wage requirements must contain the contract clauses found in [29 CFR 5.5 \(a\)](#)



I. General Contract Provisions

- **Affiliated Transactions**
 - “Affiliate” or “Affiliated Company” of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), Consolidation of Variable Interest Entities. For the purpose of this definition, “control” means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services.



I. General Contract Provisions

- Affiliated Transaction
 - Defined as any transaction, contract, or dealing with an affiliate of Awardee or with Awardee's or affiliate's directors, trustees, officers, managers, members (LLC), or other corporate officials
 - RUS approval is required before Awardees enters into affiliated transactions
 - Award funds will be limited to lower of cost or market rate (subject to RUS verification)



I. General Contract Provisions

- Records
 - Records supporting all assets financed by RUS shall be retained until audited and approved by RUS
 - Support documents for all expenditures, advances and disbursements
 - May include 3rd party invoices, timesheets, payroll records, material records, overhead allocation records, summary schedules, etc.
 - Records related to plants in service must be retained until:
 - The facilities are permanently removed from service;
 - All removal and restoration activities are completed; and
 - All costs are retired from the accounting records
 - Life and mortality study data for depreciation purposes must be retained for 25 yrs or for 10 yrs after plant is retired, whichever is longer



Contract Types

- Professional Services Contracts
- Equipment Contracts
- Construction Contracts



II. Professional Services Contracts

Awardee shall only obtain professional services from persons or firms not affiliated with, or that do not represent a contractor, vendor or manufacturer presently providing labor, materials, or equipment to the Awardee.



II. Professional Services Contracts

- Professional Services:
 - Engineering Services
 - Outside Consultant
 - In-House Engineering
 - Architectural Services



II. Professional Services Contracts (Engineering Services – *Outside Consultants*)

- RUS Form 217 (RUS Post-Loan Engineering Services Contract)
- RUS Form 245 (Engineering Service Contract Special Services – Telephone)
- Non-standard contract



II. Professional Services Contracts (Engineering Services – *In-House Engineering*)

- Awardee must request RUS approval to provide in-house services. The request shall include:
 - A description of services to be performed
 - Names and qualifications of each employee performing work, including employee in charge.
 - Such employee must meet State experience requirements for a registered engineer in the State where facilities will be located.
 - In absence of specific State experience requirements, employee should 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 Awardee from compliance with applicable state registration requirements, which may require a licensed individual to perform such services; and
 - A letter signed by an authorized representative of the Awardee requesting in-house engineering approval and certifying the supporting information.



II. Professional Services Contracts (Architectural Services)

- Awardee may use
 - RUS Form 220 (Architectural Services Contract)
 - RUS Form 217 (Post-Loan Engineering Services Contract), or
 - Non-standard contract
- Architect must be licensed in the State where the facility will be located



II. Professional Services Contracts (Contract and Closeout Documents)

- Three copies of executed RUS form contract or the approved non-standard contract must be submitted for RUS administrative approval
- Closeouts
 - RUS form contract requires two copies of
 - RUS Form 288 (Final Statement of Architect's Fees)
 - RUS Form 506 (Final Statement of Engineering Fees)
 - Similar certifications are required for non-standard professional services contracts



III. Purchase and Installation of Equipment

- Equipment purchases (including installation) under \$100,000 can be reimbursed, but require
 - Invoices and completed RUS Form 771a
- Contracts are required for equipment purchases over \$100,000



III. Purchase and Installation of Equipment (Equipment Purchased with Contract)

- Contract
 - RUS Form 397 Special Equipment Contract (Including Installation)
 - RUS Form 398 Special Equipment Contract (Not Including Installation)
 - Non-standard contract
- The engineer shall prepare the performance and installation requirements prior to releasing them along with the respective contract to prospective vendors
- Awardee may purchase equipment using a negotiated purchase, although RUS recommends that Awardee obtains quotes from at least three different vendors
- Equipment purchased under contract that does not include installation may be installed by Awardee using the Work Order method or RUS Form 773 (to be discussed)



III. Purchase and Installation of Equipment (Equipment Purchased with Contract)

- Contract and closeout documents
 - Three copies of executed RUS form contract or the approved non-standard contract, including performance requirements, must be submitted for RUS administrative approval
 - Contract can closeout after equipment has been installed, tested, and meets the performance requirements, need:
 - RUS form 756 – final contract closeout certification for RUS form contract, or
 - Similar certification for non-standard contracts



IV. Construction of Facilities

- Construction for outside plant facilities, buildings, and towers:
 - Outside Contractor
 - In-House Labor (Work Order)



IV. Construction of Facilities – Outside Contractor

- RUS Form 773 (Miscellaneous Construction Work and Maintenance Services Contract)
- RUS Form 257 (Contract to Construct Buildings)
- RUS Form 515 (Telecommunications System Construction Contract)
- Non-Standard Contract



IV. Construction of Facilities – Outside Contractor

- Attach any diagrams, sketches, and tabulations necessary to specify the work to be performed and who shall provide which materials
 - Owner furnished materials
- The engineer shall prepare the construction specifications prior to releasing them along with the respective contract to prospective contractors
- RUS recommends that Awardee obtain several quotes before choosing a contractor
- Awardee shall ensure that the contractor selected meets all federal, state, local licensing requirements and insurance requirements (7 CFR Part 1788, Subpart C)
- Awardee shall ensure that the contractor maintains the insurance coverage for the duration of the work



IV. Construction of Facilities – Outside Contractor

- Three copies of executed contract, including the construction specifications, must be submitted for RUS approval
 - Applicable to RUS contract forms 257, 515 and non-standard contracts. Not applicable to RUS contract form 773.
- RUS contract form 773
 - Unless otherwise approved by RUS, all RUS Form 773 construction shall be financed with non-award funds
 - RUS will reimburse 773 contract after work under the contract has been completed and the engineer has certified on RUS Form 771a (see work order for details) for all construction completed using RUS Form 773



IV. Construction of Facilities – Outside Contractor

- Contract can close-out after construction has been completed per specifications and all acceptance tests have been made.
- Closeout requires:
 - RUS form 756 – final contract closeout certification for RUS form contract, or
 - Similar certification for non-standard contracts



IV. Construction of Facilities – Work Order

- Work order means any work performed by the Awardee's employees, pursuant to its work order procedure, with the Awardee furnishing all the materials, equipment, tools, and transportation
- Work order construction shall be performed to all local, state, and Federal requirements
- Awardee shall keep daily timesheets and material reports, referenced by work project numbers, to record labor and materials used
 - Cost accounting system must be in place to meet the requirements of 7 CFR 3015, 3016, 3019 as applicable, to show the source and summary records to support requested and expended funds
- Awardee shall obtain the engineer's certification on RUS Form 771a for all construction completed using the work order method



IV. Construction of Facilities – Work Order

(Reimbursement for Work Order and RUS Contract Form 773)

- Unless otherwise approved by RUS, all work order construction and RUS Form 773 construction shall be financed with non-award funds. Reimbursement requires:
 1. **RUS Form 771a, initialed by the GFR, along with a description of each project**
 - Awardee shall seek reimbursement for work order or RUS Form 773 construction only after construction has been completed and properly executed closeout documents have been submitted to RUS
 2. **RUS Form 481 – Financial Requirement Statement**
 - Reimbursement request for construction performed using the work order method or RUS 773 contract must be submitted with RUS Form 481, Financial Requirement Statement (FRS).



V. Advance and Disbursement of Funds (Advance)

- Advance means transferring funds from RUS to the Awardee's deposit account.
- Pledged Deposit Account – Holds all Advances deposited by RUS. Must be established in FDIC insured bank.



V. Advance and Disbursement of Funds (Advance)

- Legal agreement contains provisions regarding advances and disbursement of funds
- RUS will be under no obligation to approve any advances unless Awardee complies with all the terms and conditions of the legal document



V. Advance and Disbursement of Funds (Advance)

- All advances will be based on the budget included in the approved application, unless any changes are made by RUS during the review process
- All post-award budget adjustments and/or system design changes need to be approved by RUS
- Pledged Deposit Account
 - Any equity or funds that are required to be deposited in Pledged Deposit Account per the legal agreement shall be subject to the same requirements as agency award funds
 - Funds other than award funds deposited in Pledged Deposit Account are reported as credit on RUS form 481 (FRS)



V. Advance and Disbursement of Funds (Advance)

- Advances are requested on RUS Form 481, Financial Requirement Statement (FRS)
- First advance must repay any interim financing indebtedness and other approved pre-application expenses
 - No further advances will be made until:
 - Any indebtedness created by the interim financing and any liens associated therewith have been fully discharged of record; and
 - Awardee has satisfied all other conditions on the advance of additional loan/grant funds
- If internally generated funds were used to finance interim construction, Awardee may request for reimbursement of those funds and Advances for other purposes in the first FRS
- Generally RUS does not approve Advances requested more than 30 days before the obligation is payable
- Advances for loan/grant combination awards will be made on a pro-rata basis



V. Advance and Disbursement of Funds (Disbursement)

- Disbursement means payment by the Awardee out of the pledged deposit account for approved award purposes (e.g. payment to contractor)
- Funds must be disbursed for the purpose for which they were advanced unless prior approval has been obtained from RUS to pay for another purpose



V. Advance and Disbursement of Funds (RUS Form 481-FRS)

- RUS Form 675, Certificate of Authority, should be completed and submitted to RUS prior to the first advance
 - FRS must be certified by corporate officer or manager authorized to sign such statements as shown on RUS Form 675



V. Advance and Disbursement of Funds (RUS Form 481-FRS)

- Interest earned and proceeds from the Sale of Property must remain in Pledged Deposit Account and can not be disbursed without RUS approval



V. Advance and Disbursement of Funds (RUS Form 481-FRS)

- Approved Purposes
 - Only approved contracts should be shown on the FRS unless a contract is submitted for approval concurrently with the FRS
 - Funds for 773 contracts should be requested under Approved Work Orders” and not listed individually on the FRS
 - Amount requested for each item on the FRS should be within the “Total Approved for Advance” amount (Column 2) unless an amendment/Closeout has been approved since the last FRS or is submitted with the current FRS



V. Advance and Disbursement of Funds (RUS Form 481-FRS)

- Total Approved for Advance Amount (Column 2 on FRS) for contracts, work orders, and operating equipment are limited as follows:
 - Equipment contracts - 90% of the approved amount
 - Construction contracts – 95% of the approved amount
 - Approved Work Orders – Amount shown on RUS Form 771a



V. Advance and Disbursement of Funds (RUS Form 481-FRS)

- Total Approved for Advance Amount (Column 2 on FRS) for contracts, work orders, and operating equipment are limited as follows:
 - Pre-application expenses – based on final itemized invoice
 - Post-loan engineering contracts – 95% of the approved amount
 - In-house engineering – 100% of the amount supported by adequate documentation
 - Operating Equipment (vehicles, work equipment, office equipment, etc.) – total amount of all invoices



V. Advance and Disbursement of Funds (RUS Form 771a)

- REA Bulletin 1770-1 describes work order procedures (<http://www.usda.gov/rus/regs/bulls/1770-1.txt>)
- RUS Form 771a
 - Basis for advancing funds for work orders and 773 contracts
 - Form must be certified by the borrower and licensed engineer (consultant) or borrower's staff engineer approved by RUS
 - Form must be initialed by the GFR
 - Only completed work (purchase and installation of equipment/software, construction of facilities, or professional services) shall be shown on the form



V. Advance and Disbursement of Funds (RUS Form 771a)

- Each item listed on RUS Form 771a should:
 - Be part of the approved System Design
 - Be supported by a detailed project description including the method (773 contract, work order, etc.) used to complete the project
 - Include labor and material costs in the respective columns unless the project was strictly for installation of equipment purchased under an equipment contract



V. Advance and Disbursement of Funds (RUS Form 771a)

- GFR Review
 - Is the 771a form completed properly?
 - Is there a clear project description for each project listed on the form?
 - Are all the items shown on the form for completed work?
 - Does the borrower have proper documentation to support the respective labor and material costs? (773 contracts, time sheets, invoices for materials, etc.)



V. Advance and Disbursement of Funds (Approved Work Orders)

- GFR Review
 - Are all the projects part of the approved System Design?
 - Do any of the projects require environmental approval? If so, has the Awardee received the approval?
 - If the borrower's staff engineer is signing the form, has this person been approved by RUS
 - Were performance bonds secured for those projects that were completed using a 773 contract where the total project cost exceeded \$250,000?



Q&A