

Connecting Rural America



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**ACE School and Joint RUS Symposium
St. Louis May 2-5, 2010**



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Agenda

- *Contractor's Bond for Construction Contracts* 😊
- RUS Contract Forms

2008 Farm Bill

- **Section 6109: Bonding Requirements**

- Amends the RE Act by adding new section 318 that directs the Secretary to review bonding requirements for all programs administered by the RUS under the RE Act to determine that bonds are not required if Federal Interests are adequately protected by product warranties, or if the costs of conditions required under a bond do not exceed its benefits.

Contractor's Bond - Policy Changes?

- **PART 1788—RUS FIDELITY AND INSURANCE REQUIREMENTS FOR ELECTRIC AND TELECOMMUNICATIONS BORROWERS**

(<http://www.usda.gov/rus/telecom/publications/publications.htm>)



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§ 1788.49 Contractors' bond requirements.

- Construction contracts > of \$250,000 for facilities
- on a form approved by RUS
- in the sum of not less than the contract price,
- Surety companies providing contractors' bonds shall be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570.


(<http://www.fms.treas.gov/c570/notes.html>)

Equipment Contract (including installation)

- RUS will not consider installation of equipment to be "construction" when
 - it is insignificant (constitutes 20% or less of the cost of the equipment to be installed); and
 - the specifications does not include associated 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.

RUS 07/28/09 Letter on Contractor's Bonds


(http://www.usda.gov/rus/telecom/publications/pdf_files/Contractors-Bond-Requirement7-28-09.pdf)


United States Department of Agriculture
Rural Development

JUL 28 2009

SUBJECT: Contractors' Bond Requirements

TO: All Telecommunications Program Borrowers

FROM: DAVID VILLANO 
for Assistance Administrator
Telecommunications Program
Rural Utilities Service

The purpose of this memorandum is to further clarify the Telecommunications Program policy on contractor's bonds for equipment contracts. In consultation with the Office of the General Counsel, the Telecommunications Program will no longer require a contractor's bond for equipment contracts under certain conditions. 7 CFR 1738.49, *Contractors' bond requirements*, requires that, for a construction contract in amounts in excess of \$250,000 for facilities, the contractor shall secure a contractor's bond. However, for purposes of RUS financing of equipment contracts that include installation, we will not consider installation of equipment to be "construction" when the installation is insignificant (constitutes 20% or less of the cost of the equipment to be installed). When the installation meets these criteria, RUS will not require a bond even if the total contract amount for equipment and installation exceeds \$250,000.

RUS would consider installation costs to be insignificant only when the bidder's responsibility to engineer, furnish, deliver, install, align and test the equipment, materials, and software described in the specifications does not include associated 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.

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Agenda

- Contractor's Bond for Construction Contracts
- *RUS Contract Forms* 😊

RUS Standard Contract Forms 😊

- On 03/31/2008, OMB approved the paperwork burden for “Telecommunications System Construction Policies and Procedures” for another 3 years to 3/31/2011.
- One of the OMB terms for clearance is the Agency should provide an update on the process underway to consolidate existing forms and contracts within this information collection.

RUS Standard Contract Forms 😊

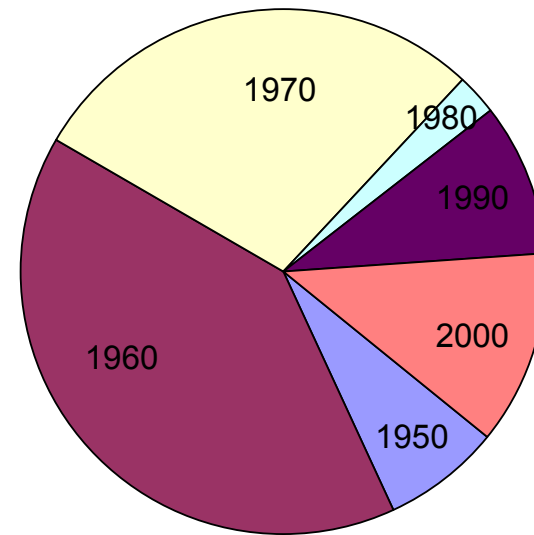
- Paperwork Burden Package

- Includes 42 forms including the 217, 397, 398, 515, 525, and 545. Excludes 257 and 220 forms.

- 395 new equipment contract would replace 397, 398, 525 & 545

RUS Standard Contract Forms 😊

Year	Forms	%
1950	3	7
1960	17	40
1970	12	29
1980	1	2
1990	4	10
2000	5	12
Tot.'s	42	100



RUS Standard Contract Forms 😊

- “OGC” Position on Agency Contracts
 - Contracts need to be balanced
 - Contracts needs to be in line with commercial contractual practices
 - No opposed to Agency having its own contract forms
 - Considers the current draft of RSU Standard Form 395 meeting the above requirements and supports publication of this draft in the FR as a proposed rule

RUS Standard Contract Forms 😊

- Major Changes-395 Standard Contract Form Draft
 - Allows either liquidated damages or consequential damages
 - No support after discontinuing product manufacturing (5-yrs.)
 - Damages - 1 vs. 10 times the total contract price
 - No partial close-out of individual projects
 -

March 29 RUS Letter to RSI (NTCA)

- January 27, 2010 letter from RSI signed by David Lowe (NTCA & RSI), Dave Herron (West Carolina Rural Tel. Coop & RSI), Robert Tupper (ACE Standard Committee & RVW), and Gary Larson (Communications Consultants & RSI) (<http://ruralstandards.org/>)
- This March 29, 2010 letter signed by our RUS Deputy Assistant Administrator, Ms. Jessica Zufolo, on behalf of the RUS Administrator, Jonathan Adelstein, directs the Agency to revise the RUS Standards Contract Forms as well as the associated construction Standards.



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RUS Standard Contract Forms 😊

- Work Plan for 395 Contract
 - Create a set of final documents for the new contract
 - Revise 7 CFR 1753 and Bulletin 1738-2 to reflect the new form 395 and to eliminate 4 contract forms and associated final documents (about 11 forms)
 - Revise 7 CFR 1755, “Telecommunications Program Standards and Specifications - Materials, Equipment, and Construction”, to reflect the use of the new 395 form
 - Prepare a Federal Register Notice to publish the proposed standard contract form 395

RUS Standard Contract Forms 😊

- **RUS 515 Form**



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