

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT
Rural Utilities Service

BULLETIN 1726-601

SUBJECT: Electric System Construction Policies and Procedures - Interpretations

TO: RUS Electric Borrowers and RUS Electric Staff

EFFECTIVE DATE: Date of Approval

OFFICE OF PRIMARY INTEREST: Electric Staff Division

INSTRUCTIONS: This supersedes RUS Bulletin 1726-601, dated 5/20/96. File with 7 CFR 1726.

AVAILABILITY: This bulletin can be accessed via the internet at <http://www.usda.gov/rus/electric/bulletins.htm>.

PURPOSE: The purpose of this bulletin is to clarify certain requirements of 7 CFR 1726, Electric System Construction Policies and Procedures. This revision includes additional interpretations.



Blaine D. Stockton
Assistant Administrator
Electric Program

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Date

TABLE OF CONTENTS

1 GENERAL.....3
2 QUESTIONS AND ANSWERS - BIDDING3
3 QUESTIONS AND ANSWERS - FORMS.....5
4 QUESTIONS AND ANSWERS - MISCELLANEOUS7

Exhibits

Exhibit A: Summary of RUS Electric Contracting Procedures8

INDEX:

CONTRACTS:

Electric System Construction

PROCUREMENT:

Electric System Procurement and Construction

ABBREVIATIONS

| | |
|-----|-----------------------------|
| CFR | Code of Federal Regulations |
| NUP | Net Utility Plant |
| RUS | Rural Utilities Service |

1 GENERAL

- a The purpose of this bulletin is to clarify certain requirements of 7 CFR 1726, Electric System Construction Policies and Procedures.
- b This bulletin contains no new requirements and is intended only to clarify the requirements of 7 CFR 1726, not to modify nor to amend those requirements. In the event of conflict, the requirements of 7 CFR 1726 shall govern.
- c As indicated in §1726.12, 7 CFR 1726 applies only to projects that are “...financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects.” Other borrower projects are not subject to the requirements of 7 CFR 1726.
- d Some borrowers have expressed concern about using calendar year limits, since one or two large procurements could consume the entire limit, and very small procurements thereafter would be subject to more stringent requirements. This situation is inherent in any calendar year limit. RUS expects each borrower to manage its procurement program by using competitive procurement procedures (e.g., formal competitive bidding) or contract forms not subject to the calendar year limit for large procurements and prudently utilizing the flexibility provided by 7 CFR 1726 for smaller procurements so that the calendar year limits are not exceeded.
- e Exhibit A is a summary of the RUS electric contracting procedures in 7 CFR 1726. Since this summary does not include all applicable requirements, 7 CFR 1726 should always be consulted for detailed requirements.

2 QUESTIONS AND ANSWERS – BIDDING

- a Question: Are the “borrower responsibility” limits in §1726.51(b)(1) (distribution line construction) and §1726.77(b)(1) (substation and transmission line construction) separate individual limits or do they constitute a single limit?
Answer: Each of the limits in 7 CFR 1726 is a separate individual limit which is not tied to the other limits.
- b Question: Please clarify the exact determination of the dollar amounts and timing of contracts to be applied to the various yearly limits.
Answer: There are several references in 7 CFR 1726 to calendar year limits. For example, §1726.51(b)(1) states:

“It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of \$250,000 or one percent of NUP, whichever is greater, per calendar year of distribution line

construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.”

The dollar amount of each negotiated contract to be used in determining compliance with the cumulative yearly limits is the maximum contract price less the cost of owner furnished materials and equipment, if any, included in that amount. The maximum contract price is the amount entered in Article III, Section 1.b. of RUS Form 790, “Electric System Construction Contract – Non-Site Specific Construction,” or the equivalent amount in other contract forms. The date to be used to determine the applicable calendar year is the date of contract, i.e., the date entered in the Acceptance section of RUS Form 790, or the equivalent date in other contract forms.

Since the calendar year limits relate to the use of a particular contract form or bidding procedure, the key element of the requirement is the award of contracts. It is not related to actual payments under the contract nor to the length of the contract period.

- c *Question: Is there a limit on the number of contracts or the dollar amount of work that may be bid under Formal Competitive Bidding?*
Answer: There is no limit on Formal Competitive Bidding. RUS encourages the use of Formal Competitive Bidding to the greatest extent practical.
- d *Question: What procedure should be followed if fewer than three bids are received under Multiparty Unit Price Quotations or Multiparty Lump Sum Quotations?*
Answer: Follow the same procedure used for Formal Competitive Bidding under §1726.201(f)(1), i.e., the borrower must determine and document that all reasonable measures have been taken to assure competition prior to awarding the contract. The borrower may, however, elect to reject all bids, make changes in the specification or the qualified bidders list or both, and invite new bids.
- e *Question: If both RUS financed construction and non-financed work are included in the same contract, does the entire amount of the contract apply to the bidding limits of 7 CFR 1726 or just the financed portion?*
Answer: There are two different relevant scenarios:
- (1) If a project or group of related projects are partly financed by RUS (e.g., the borrower receives a substantial contribution in aid of construction), the entire contract amount is applied to the limits of 7 CFR 1726, as indicated by §1726.12, which states that 7 CFR 1726 applies to any project that is “...financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects” (emphasis added.) Financed by RUS includes concurrent supplemental loans and reimbursement of general funds.

- (2) If the contract includes distinctly separate projects (e.g., right-of-way clearing for new construction and reclearing for maintenance) and each type of work is accounted for separately, then the portion of the contract not financed by RUS would not be applied to the bidding limits of 7 CFR 1726. This applies only when separate, unrelated projects are included under the same contract. The borrower may also use two separate contracts for the two different projects/types of work.

3 QUESTIONS AND ANSWERS – FORMS

- a *Question: Is RUS Form 198, “Equipment Contract,” required for the purchase of materials of \$500,000 or more?*
Answer: No. §1726.50(a) and §1726.76(a) require the use of RUS Form 198 for equipment purchases of \$500,000 or more, but materials in any amounts may be purchased using RUS Form 198, purchase order, or other written agreement. (See §1726.14 for the definitions of equipment and materials.)
- b *Question: §1726.51(a)(1)(iii) allows the use of RUS Form 790 “Electric System Construction Contract – Non-Site Specific Construction,” up to certain calendar year limits. Do executed contracts using this form count against the cumulative calendar year bidding limits?*
Answer: The type of form used is not related to the cumulative calendar year bidding limits. The bidding limits relate to the bidding procedure used. For example, if an RUS Form 790 is used with Formal Competitive Bidding, such a contract would fall under §1726.51(b)(3) and would not apply to the cumulative totals stipulated under §1726.51(b)(1) (borrower responsibility) or §1726.51(b)(2) (multiparty unit price quotations). Conversely, the value of a non-competitively awarded contract, e.g., a negotiated contract, would apply to the cumulative total stipulated under §1726.51(b)(1), even if an RUS standard contract RUS Form 790 is used.
- c *Question: §1726.51(a)(1) allows the use of RUS Form 790, “Electric System Construction Contract – Non-Site Specific Construction,” under certain circumstances. Must this form be used or is an RUS Form 830, Electric System Construction Contract – Project Construction, acceptable?*
Answer: The borrower may choose to use an RUS Form 830 for any distribution line construction.
- d *Question: Can the RUS Form 790, “Electric System Construction Contract – Non-Site Specific Construction,” be used for a “labor only” contract?*
Answer: Yes, under certain circumstances. See RUS letter dated April 14, 2004, “Permitted Modification of RUS Form 790,” to all electric borrowers, which is summarized as follows: If RUS Form 790 is used as a “labor only” contract, i.e., the borrower supplies all materials and equipment, and the contract is to be accounted for under RUS Bulletin 1767B-2, “Work Order Procedures – Electric

Program,” a borrower may choose to eliminate the cost of owner furnished materials from the unit prices, and modify RUS Form 790 as follows:

- (1) Notice & Instructions to Bidders, Item 2 – Delete this item.
- (2) Proposal, Article I, Section 3, Paragraph 2 – Delete the first three sentences of Paragraph 2. The remaining text of Paragraph 2 is retained so that it reads:

Materials, if any, not required for the project, which have been furnished to the Bidder by the Owner or delivery of which has been accepted by the Bidder on behalf of the Owner, shall be returned to the Owner by the Bidder upon completion of construction of the project. The value of all materials not installed in the project nor returned to the Owner shall be deducted from the final payment to the Bidder.

- (3) Certain other provisions in the RUS Form 790 relating to contractor furnished materials become inapplicable, since contractor furnished materials are outside the scope of a “labor only” contract. Such provisions may be deleted if desired for clarification.

- e Question: *Can forms designed for Formal Competitive Bidding (i.e., public bid opening) be used where the bids are opened in private?*
Answer: Where the bidding procedures permitted in 7 CFR 1726 envision private bid opening (e.g., Multi Party Unit Price Quotations, Informal Competitive Bidding, etc.), borrowers may modify the standard contract forms to reflect private bid opening.
- f Question: *Can RUS Form 790, “Electric System Construction Contract – Non-Site Specific Construction,” be used for distribution line project construction?*
Answer: RUS Form 790 may sometimes be used for distribution project construction in lieu of RUS Form 830, “Electric System Construction Contract – Project Construction,” but only under the circumstances indicated in §1726.51(a)(1), which include: (i) Contracts for which the borrower supplies all materials and equipment; or (ii) Non-site specific construction contracts accounted for under the work order procedure; or (iii) If neither paragraph (i) nor (ii) are applicable, the borrower may use RUS Form 790 for contracts, up to a cumulative total of \$250,000 or one percent of NUP, whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.
- g Question: *Can specifications and other conditions be added to RUS standard contract forms?*
Answer: Generally, it is acceptable to add specifications and other conditions to supplement any of the RUS contract forms, provided the added material does not have any terms or conditions that conflict with the RUS form. A provision should be included stating that if there is a conflict between the added material and the

RUS form, the RUS form governs. Changes made to the RUS contract form itself generally require RUS approval. Also note that, if the contract requires RUS approval, the associated terms and conditions must be approved by RUS prior to issue for bid.

4 QUESTIONS AND ANSWERS – MISCELLANEOUS

- a Question: *What constitutes a calendar year?* Answer: A calendar year runs from January 1 to December 31.
- b Question: *It appears that some of the limits in 7 CFR 1726 relate to cumulative calendar year amounts and some relate to individual contracts. Is this correct?* Answer: Yes. The cumulative calendar year limits relate exclusively to the type of bidding procedure required or, in one case, permitting the use of RUS Form 790, “Electric System Construction Contract – Non-Site Specific Construction.” Other limits in 7 CFR 1726 relate to individual contracts, including RUS approval of contracts, minor modifications or improvements, and the use of most contract forms.
- c Question: *How does “minor modification and improvement,” as used in 7 CFR 1726, relate to “minor project” as used in 7 CFR 1721, subpart A, Advance of Funds?* Answer: There is no connection between the two terms. The term “minor modifications and improvements” refers to individual projects costing less than \$50,000 and is used only in 7 CFR 1726 and only to determine if a particular contract form is required.

This summary does not include all requirements. See 7 CFR 1726 for detailed requirements.

SUMMARY OF RUS ELECTRIC CONTRACTING PROCEDURES

| Facility or Contract Type | Bidding Procedure | | | | | Contract Approval |
|---|--|---|----------------------------|------------------------------|------------------------|---|
| | Borrower Responsibility | Multiparty Quotations | Formal Competitive Bidding | Informal Competitive Bidding | Multiparty Negotiation | |
| Distribution Line Construction | ≤\$250,000 or 1% of NUP/CY | ≤\$350,000 or 1.5% of NUP/CY (Unit Price) | All Other | N/A | N/A | N/A |
| Substation and Transmission Line Construction | ≤\$250,000 or 1% of NUP/CY (NTE \$2,000,000) | N/A | All Other | N/A | N/A | ≥\$250,000 or 1% of NUP/Contract (NTE \$500,000 for Dist; \$1,500,000 for PS) |
| Generation Equipment and Construction | ≤\$1,500,000 | N/A | Yes | Yes | RUS Approval Required | Specific Contracts |
| Buildings | N/A | ≤\$250,000 or 1% of NUP/CY (NTE \$1,000,000) (Lump Sum) | All Other | N/A | N/A | N/A |
| Communications and Control | ≤\$250,000 or 1% of NUP/CY (NTE \$2,000,000) | N/A | N/A | N/A | All Other | ≥\$250,000 or 1% of NUP/Contract (NTE \$500,000 for Dist; \$1,500,000 for PS) |

Note: All limits are exclusive of the cost of owner furnished materials

Abbreviations: CY - Calendar Year
NTE - Not To Exceed

Dist - Distribution Borrower
NUP - Net Utility Plant

N/A - Not Applicable
PS - Power Supply Borrower