

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

RUS Form 545, Central Office Equipment Contract (Not Including Installation)

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment, and Construction to add a RUS Form 545 Central Office Equipment Contract (Not Including Installation) and to rescind REA Form 545, Central Office Equipment Contract (Not Including Installation). RUS is proposing this new contract form in order to incorporate contractual and technological changes.

DATES: Written comments must be received by RUS, or bear a postmark or equivalent, no later than February 9, 1999.

ADDRESSES: Comments should be mailed to Orren E. Cameron, III, Director, Telecommunications Standards Division, Rural Utilities Service, STOP 1598, United States Department of Agriculture, 1400 Independence Ave., SW, Washington, DC, 20250-1598. RUS requests an original and three copies of all comments (7 CFR part 1700). All comments received will be available for public inspection at Room 2835 (address as above) during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Central Office Equipment Branch, Telecommunications Standards Division, Rural Utilities Service, STOP 1598, United States Department of Agriculture, 1400 Independence Ave., SW, Washington DC, 20250-1598, telephone number (202) 720-0671.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. A Final Rule related Notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) exempts RUS loans and loan guarantees from coverage under this Order.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with § 212(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(c)), appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the

Paperwork Reduction Act of 1995 (44 U.S.C. 35, as amended) under control number 0572-0059.

Send questions or comment regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034-South Building, Washington, D.C. 20250-1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851, Rural Telephone Loans and Loan Guarantees; and number 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Unfunded Mandates

This rule contains no Federal mandates for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

The last revision to the REA Form 545 Contract was September 1966. Since that date, divestiture and competition legislation and regulation have brought about many changes in the conduct of telecommunications business. Notable advances of central office equipment technology such as Signaling System No. (SS7), Advanced Intelligent Network (AIN), and Integrated Services Digital Network, have made many new services available. In order to address the above, significant changes have been made in the way business is conducted in the telecommunications industry.

The proposed RUS Form 545 Contract incorporates those changes into the Central Office Equipment Contract. The main changes to the Contract are new requirements that: (1) Provide for a software license, (2) provide for patent, copyright, and trademark infringement protection, (3) provide a cap on consequential damages, and (4) provide Equal Employment Opportunity requirements. In addition, it revises and updates provisions for (1) delivery of equipment, (2) inspection and testing of the completed installations, (3) payments to the contractor, (4) insurance, (5) liquidated damages, and (6) completion of the project. The above actions will make it possible for RUS telecommunications borrowers to continue to provide their subscribers with the most modern and efficient telecommunications service, implemented in a predictable and orderly fashion.

RUS has issued a series of 7 CFR chapter XVII parts, which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the loan documents and security instruments that provide for and secure RUS financing. The revision to 7 CFR part 1755 codifies RUS Form 545, Central Office Equipment Contract (Not Including Installation). The 7 CFR part 1755 also describes where copies of the contract may be obtained. RUS

telecommunications borrowers are required to use the RUS Form 545 Contract where major central office facilities are being procured but not installed under this contract. The present RUS Form 545 has become outdated due to technological advancements and other reasons. Advanced technology and equipment concepts have introduced new issues. Contract terms and obligations need to be modified and updated to more accurately reflect present business practices. Some representative issues addressed in this proposed RUS Form 545 contract are: expansion of patent infringement protection to include copyrights, trademarks, etc.; software right-to-use licensing terms; warranty coverage; use of information; consequential damages; delays in project; liquidated damages; insurance; independent contractor provisions; and support of discontinued products. All these additions and changes have been made so that RUS telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

Following the existing practice of the RUS, this proposed rule contemplates publication of the complete text of standard contract Form 545 in the CFR. However, interested parties are advised that RUS is considering and anticipates publishing a proposed rule providing for an alternative procedure for the

publication of standard forms of contracts pursuant to which the full text of the contract form will not be set forth as codified text in the CFR. Should such alternative procedure be adopted pursuant to applicable rulemaking procedures, the full text of this contract, as promulgated through final rulemaking, may not be codified in the CFR.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, Chapter XVII of Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT, AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 7941 *et seq.*

2. Section 1755.93 is amended by revising the entry for Form 545 in the table and footnote 1 at the end of the table to read as follows:

§ 1755.93 List of standard forms of telecommunications contracts.

* * * * *

RUS form No.	Issue date	Title	Purpose	Source of copies
545	[TBD]	Central Office Equipment Contract (Not Including Installation).	Purchase and deliver Central office equipment	RUS. ¹

¹ A limited number of copies of the publication will be furnished by RUS upon request. As this document is produced by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent to Program Development and Regulatory Analysis United States Department of Agriculture, Rural Utilities Service, Washington, DC 20250-1522. The telephone number is (202) 720-8674.

* * * * *

3. Section 1755.545 is added to read as follows:

§ 1755.545, Form 545, central office equipment contract (not including installation.)

RUS Form 545, Central Office Equipment Contract (Not Including Installation), as contained in this section shall be used for all purchases of central office equipment (other than such purchases of special equipment using Form 397) using RUS financial assistance when the equipment is supplied but not installed by the seller as explained in 7 CFR part 1753,

subparts E and H. RUS Form 545 Central Office Equipment Contract follows:

Central Office Equipment Contract (Not Including Installation)
Notice and Instructions to Bidders;
Central Office Equipment Project (Not Including Installation)

1. Sealed proposals for the engineering, furnishing, and delivery, of central office equipment, materials, and software for the

(hereinafter called the "Owner") which is to be part of the system known as

to be financed pursuant to a loan contract between the Owner and the United States of America (hereinafter called the "Government") by the Administrator (hereinafter called the "Administrator") of the Rural Utilities Service (hereafter called "RUS") will be received by the Owner on or before _____ o'clock, _____ M.,

at _____

at which time and place the proposals will be publicly opened and read. The Rural Telephone Bank may also be a party to the loan contract.

2. The Bid Documents (composed of plans, specifications, and drawings), together with

all necessary forms and other documents for bidders, may be obtained from the Owner or from the Owner's Engineer, (hereinafter called the "Engineer") at the latter's office at _____.

The Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the loan contract between the Owner and the Government may be examined at the office of the Owner.

Each set of Bid Documents will have a serial number, assigned by the Engineer, and the number with the name of the bidder will be recorded by the Engineer. Bids will be accepted only from original bidders, or other qualified bidder to whom such a set has been transferred by the original bidder with the approval of the Engineer prior to the pre-bid technical session.

3. A pre-bid technical session will be held with each bidder during the week of _____, (year), at _____.

for the purpose of receiving the bidder's technical proposal, discussing details of the Project, and considering suggestions from bidders. The Owner shall attach to this Notice a list of the information required in the bidder's technical proposal. Each bidder will be given a specific time period for the pre-bid technical session. At the pre-bid technical session, the bidder shall fully describe to the Owner any exceptions to the Specifications the bidder may request. In addition, the bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner decides to incorporate any changes into the Specifications, the Owner shall furnish all prospective bidders a copy of the Specifications containing such revisions (the "Revised Specifications") and all bids shall be made on the basis of the Revised Specifications. At this session, the bidder shall identify all documentation and materials that it claims constitute agreed excluded documentation under Section (2)(xi) of the Software License. The bidder shall claim only those items it may be unable to provide to the Owner as required by said (2)(xi). The Engineer shall immediately provide a list of all items so identified to the [appropriate RUS Area office]. The Engineer shall inform the bidder at least _____ days before the scheduled bid opening whether either the Engineer or [RUS] will reject the bid because of items so identified. Licensors agree that certain Licensed Software cannot be excluded from the requirements of section (2)(xi), including but not limited to, software, the absence or improper operation of which would significantly impair the operation of the system, would significantly impair the ability of the Owner to generate revenue, or would pose a risk to RUS loan security. If allowed, the agreed excluded documentation shall be individually identified in an attachment to the bid. No bid shall be accepted from a bidder who fails to attend the pre-bid technical session or fails to demonstrate to the Owner that its equipment meets the requirements of the Plans and Specifications.

4. Proposals shall be submitted on the forms furnished by the Owner and must be

delivered in a sealed envelope addressed to the Owner. The name and address of the bidder, its license number, if a license is required for bidding on a project by the State, and the date and hour of the opening of bids must appear on the envelope in which the proposal is submitted. Proposals must be in ink or typewritten. No alterations or interlineations will be permitted, unless made, initialed, and dated before submission.

5. Prior to the submission of the proposal, the bidder shall make and shall be deemed to have made a careful examination of the Specifications, forms of bidder's proposal and acceptance, and shall become informed as to the location and characteristics of the proposed central office and remote terminal features and services, the transportation facilities, the kind of facilities required before and during the delivery of the equipment and materials, the general local conditions and all other matters that may affect the cost. Bidders will be required to comply with all applicable statutes, codes, and regulations, including those pertaining to the licensing of contractors and the "Anti Kick-Back Acts," as amended, (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*) and regulations issued pursuant thereto, and 18 U.S.C. 287, 874, 1001.

6. If requested by the Owner or the Administrator, the bidder shall furnish evidence, satisfactory to the Owner and the Administrator, that the bidder has the necessary facilities, ability, and financial resources to perform the Contract.

7. The Contract, when executed, shall be deemed to include the entire agreement between the parties thereto and neither party shall claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the other or by any other person.

8. The Owner reserves the right to waive minor irregularities or minor errors in any proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the proposal in which they occur prior to the execution of any Contract, which may be awarded thereon.

9. The Owner reserves the right to reject any or all proposals.

10. The equipment to be furnished for all central offices and remote switching terminals included in the proposal is to be of the same basic design. A proposal submitted on any other basis will not be considered.

11. Equal Opportunity and Employment.

(a) The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" contained herein.

(b) The goals and timetables for minority and female participation are available from the Office of Federal Contract Compliance Programs (OFCCP) which has the sole responsibility for enforcing Executive Order 11246, as amended.

The goals set forth in Executive Order 11246, as amended, are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a

geographical area located outside of the covered area, it shall apply the goals established for such geographical area where work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with Executive Order 11246, as amended, and the implementing regulations at 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause.

(c) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and, the geographical area in which the subcontract is to be performed.

Bidder's proposal to Engineer, Furnish, and Deliver Equipment, Materials and Software (Proposal shall be submitted in ink or typewritten)

To: _____
(HEREINAFTER CALLED THE "OWNER")

The undersigned (hereinafter called the "Bidder") hereby proposes to engineer, furnish, and deliver, and install the equipment, materials and software for each Project listed under Column 1, "Project," in Article I, 1, and described in the plans, specifications and drawings (hereinafter called the "Specifications") prepared by the Owner and attached hereto and made a part hereof, financed by a loan to the Owner made or guaranteed by the United States of America, acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator"), or by loans to the Owner by the United States of America and by the Rural Telephone Bank, and designated _____.

The Bidder has become informed as to the location and characteristics of the proposed Project, has become informed as to the kind of facilities required before and during the delivery and installation of the equipment, material, and software and has become acquainted with all other matters that may affect the cost and time of delivery of the Project.

The Bidder agrees that if its bid is accepted the following terms and conditions shall govern.

If, in submitting this proposal, the Bidder has taken any exception to the form of proposal furnished by the Owner, the Bidder understands that the Owner and the Administrator may evaluate the effect of such change as they see fit and they may exclude the proposal from consideration in determining the award of the Contract.

ARTICLE I.—Section 1. Bid Price. The Bidder Will Engineer, Furnish, and Deliver to the Delivery Points Specified Below the Equipment Described in the Specifications for the Following Sums

Project (see notes 1, 2 and 3)	Base bid	Delivery point	Delivery (see note 4)	Completion of the project (see note 5)	Spare parts	Item	Maintenance tools
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	\$				\$	a	\$
	\$				\$	b	\$
	\$				\$	c	\$
	\$				\$	d	\$
	\$				\$	e	\$
	\$				\$	f	\$
Totals	\$	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	\$	XXXXXX-XX	\$
Total Base Bid	\$	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	XXXXXX-XX	XXXXX-XXX
Alternate 1	\$				\$	g	\$
Alternate 2	\$				\$	h	\$
Alternate 3	\$				\$	i	\$
Alternate 4	\$				\$	j	\$

Note 1: If a remote switching terminal, so designate and list after host office.

Note 2: All items included in a Project shall have the same completion schedule.

Note 3: Each Project shall be separated by a blank line.

Note 4: Delivery time in calendar days.

Note 5: Time in calendar days for Completion of the Project shall be no later than 90 days after the time established for Delivery.

Section 2. Acceptable Equipment. Unless otherwise specified by the Owner (and with advance written agreement by RUS), the Bidder agrees to furnish under this proposal only equipment which is currently listed in RUS Information Publication 344-2 or covered by a letter of technical acceptance issued by the Chairman, Technical Standards Committee "A" (Telecommunications). The Bidder agrees also to furnish only materials, equipment, and software which are new and of most recent issue and manufacture, as of the date of the bid opening, or of near future release for which the Bidder can assure timely delivery.

Section 3. Changes in Project. The Owner, with the approval of the Administrator, may from time to time prior to the delivery of equipment or software under this Contract effected by the acceptance of this proposal, make reasonable changes, additions to or subtractions from the Specifications which are part of the proposal as conditions may warrant. However, if substantial changes in the Project shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within thirty (30) days after any such change is made. Further, if the cost to the Bidder shall be increased or decreased by any such change or addition, the Contract price shall be increased or decreased by a reasonable amount in accordance with a contract amendment signed by the Owner and the Bidder and approved by the Administrator. No claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition. The delivery times specified under

Column 4, "Delivery", in Article I, Section 1, can only be changed by a Contract amendment approved by the Bidder, the Owner and RUS.

Section 4. Taxes. The bid prices herein set forth do not include any amounts payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase, or use of materials, supplies, equipment, or software to be incorporated in the Project(s). If any such tax is applicable to the sale, purchase, or use of materials, supplies, equipment, or software hereunder, the amount thereof shall be stated separately on all invoices and paid by the Owner.

Article II

Delivery

Section 1. Time of delivery. The time of delivery of materials, equipment, and software is of the essence in this Contract. The Bidder shall deliver the materials, equipment, and software required hereunder for each Project upon the time intervals established under Column 4, "Delivery," in Article I, 1, after the Administrator shall have approved this Contract in writing. The times for such delivery shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Bidder, including, but not limited to, acts of God, fires, strikes, floods, changes in the Specifications as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible. However, no such extension of time shall be granted the Bidder unless within thirty (30) days after Bidder becomes aware of the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the

Owner. Further, no delay in such time for delivery of materials, equipment, and software shall result in any liability on the part of the Owner, except that the Owner shall be responsible for and shall pay the Bidder on demand all additional, supportable costs, and expenses incurred by the Bidder due to delays to the extent such delays are caused by the Owner's failure to perform its obligations under this Contract unless the Owner's failure to perform is caused by forces beyond its control.

Section 2. Sequence of Delivery. All Projects shall be delivered in the sequence in which they are listed under Column 1, "Project," in Article I, Section 1.

Section 3. Inspection and Tests. All materials, equipment, and software used therein shall be subject to the inspection, test, and approval of the Owner and Administrator, in accordance with the Specifications. The Bidder shall furnish all pertinent information required concerning the nature or source of materials. The Owner and the Administrator shall have the right to inspect pertinent records (other than manufacturing cost information) of the Bidder and of any subcontractor relevant to this Project(s). The Bidder shall provide all reasonable facilities necessary for such inspection and tests, except that the Bidder is not required to provide test equipment for the Owner's tests unless specifically required in the Specifications. Failure of the Owner to make inspections shall not release the Bidder from performance required hereunder.

The Owner shall make inspections and tests of each Project for compliance with the Specifications and provide the Bidder the results of such inspections and tests in writing. If the Owner has not completed its inspections and tests and provided the

Bidder the results within thirty sixty (60) days after the date of delivery as set forth under Column 4," delivery" in Article I, 1, the Owner shall (1) pay to the Bidder the costs incurred by the Bidder as a result of this delay, and (2) grant an extension of time for the Completion of the Project equal to the number of days from the date of the end of the sixty (60) day period until the date the Owner provides such results to the Bidder. A longer period of time for inspection and tests can be allowed if agreed to in writing by the Bidder and the Owner.

Within thirty (30) days of receipt of the results of the inspections and tests from the Owner, the Bidder shall correct all deficiencies, if any, listed on the test results summary and notify the Owner in writing of such corrections, at which time a final Owner's inspection and test of each Project shall be conducted. If tests subsequent to this are made necessary by the Bidder's failure to satisfactorily resolve all such deficiencies as previously listed, the Bidder shall pay the Owner for the cost incurred by the Owner for all such subsequent tests.

Section 4. Defective Workmanship, Materials Equipment, or Software. Throughout the warranty period defined below the Bidder shall, within thirty (30) days of written notice from the Owner, and without charge to the Owner, at the Bidder's option, either remedy or replace any materials, equipment, or software found to be defective in material, or workmanship, or not in conformity with the Specification. This is subject to the following definitions and conditions:

(a) The warranty start date for a Project is the scheduled date of Completion of the Project as set forth under Column 5, "Completion of the Project," in Article I, 1, or such earlier date that such Project is certified complete. The warranty period is twelve (12) months from the warranty start date. If circumstances or events under the control of the Bidder cause a delay beyond the scheduled date of Completion of the Project, the warranty period is twelve (12) months from the actual date of Completion of the Project, as defined in Article VII, 1. The warranty period shall not be extended due to delays caused by the Owner.

(b) Without regard to the expiration of the warranty period set forth above, the Bidder warrants to the Owner that any Software furnished under this Contract shall function, for a period of five (5) years from the warranty start date defined in subsection (a) above, in accordance with the specifications and any written or printed technical material provided by the Bidder to explain the operation of the Software and aid in its use. The Bidder shall correct all deficiencies within thirty (30) days from the date of receipt by the Bidder of written notice of such deficiencies from the Owner. An extension of this thirty (30) day period may be allowed only if agreed upon by the Owner. It shall be the Bidder's obligation to insert and thoroughly test, at no charge to the Owner, any software amendment or alteration provided to satisfy the obligations of this 6. If a deficiency is detected or a correction made within the final ninety (90) days of the warranty, the warranty shall be

extended to a date ninety (90) days after the deficiency has been corrected.

(c) The Owner shall pay the Bidder for any use of the Bidder's technical assistance center except for usage to diagnose defects as provided in this 4.

(d) The warranty continues in full force and effect whether or not the Owner has accepted the materials, equipment, or software, or by the issuing of any certificate with respect to Completion of the Project.

(e) The warranty does not cover defects in materials, equipment, or software that are caused by modifications to or abuse of materials, equipment, or software by the Owner or the Owner's agents, including but not limited to, the Firm contracted by the Owner to install the materials, equipment, and software.

(f) The Owner shall bear the cost and risk of shipping defective components to the Bidder's designated repair center. The Bidder shall bear the cost and risk of shipping new or repaired replacement components to the Owner.

Article III

Payments

Section 1. Payment of 90 percent.

The Bidder shall provide the Owner with written estimates, including the prices, of the materials, equipment, and software delivered to the site of each Project listed under column 2, in Article I, section 1. If the Owner approves these estimates, the Owner will pay the Bidder 90 percent of the estimates when all materials, equipment, and software required to put each Project into operation have been delivered to the site of such Project.

Section 2. Payment of balance. Upon completion of installation (by others) of the equipment, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, the Owner shall make a final inspection of the materials, equipment, and software provided hereunder as set forth under Article II, 3, Inspections and Tests. If the materials, equipment, and software shall be found to be in accordance with the Specifications and all provisions hereunder, the owner shall certify such fact to the Administrator for approval and as to the amount of the balance found to be due to the bidder. When such approval has been given, the Owner shall pay to the Bidder all unpaid amounts to which the Bidder shall be entitled hereunder. However, such final payments shall be made not later than one hundred twenty (120) days after delivery as set forth under Column 4, "Delivery" in Article I, section 1, unless approval by the Administrator shall be withheld or delayed due to Bidder's actions or failure to act.

Section 3. Interest on unpaid amounts. Payment on undisputed invoices submitted by the Bidder shall be due thirty (30) days after receipt. Any amounts of these invoices not paid when due shall accrue interest at a rate one and one-half percent (1 1/2%) per year higher than the "Prime Rate" published in the Wall Street Journal in its first issue of the month in which payment becomes due and changing each subsequent month with the first issue published in the respective month.

Section 4. Acceptance not waiver.

Acceptance by the Owner of equipment, materials, or software while the Bidder is in default under any provision of this Contract shall not be construed as a waiver by the Owner of any right hereunder including, without limitation, any right to liquidated damages the Owner may have by virtue of Article V, section 2.

Article IV

Particular Undertakings of the Bidder

Section 1. Possession and Control. The equipment, materials, and software purchased under this Contract, until such date or dates when the Owner may take possession and control, shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith, and in connection with the equipment, materials, and software to be used therein, shall be borne by the Bidder. The Bidder shall make good and fully repair all damages to the equipment, materials, and software under the control of the Bidder by reasons of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

Section 2. Termination of Bidder's Risks and Obligations. The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of delivery. Upon such delivery of possession and control of any Project the Bidder's risks and obligations as set forth above pertaining to such Project shall be terminated; provided, however, that nothing herein contained shall relieve the Bidder of its obligation for full performance under the Specifications, or its liability with respect to defective materials, equipment, or software as specified in Article II, section 4, hereof. The equipment shall not be installed until delivery of possession and control to the Owner has been accomplished, as set forth above.

Section 3. Purchase of Materials. The Bidder shall purchase all materials and supplies except software outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right, title, or interest therein. Materials and supplies other than software shall become the property of the Owner as the Owner makes payments therefor to the Bidder in accordance with Article III, section 1(a).

Section 4. Software License. If the Bidder requires a software license agreement covering the rights, terms, and conditions of the use and assignability of all software integral to the operation of the Project, the license shall be in the form of Addendum 1 to this Contract (See 7 CFR 1753.38(c)).

Section 5. Assignment of Guarantees. All guarantees of materials, equipment, workmanship, and software running in favor of the Bidder shall be transferred and assigned to the Owner upon Completion of the Project and at such time as the Bidder receives final payment. Any such guarantees shall be in addition to the Bidder's warranty defined in Article II, section 4. This provision may be modified with respect to a particular warranty if the Bidder

demonstrates to the satisfaction of RUS and the Owner that a transfer is not possible.

Section 6. Patent, Copyright, Trademark, and Trade Secret Infringement. The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent, copyright, trademark, or violation of trade secrets covering any equipment or software used in the work, except for items of the Owner's design or selection. If the Owner's use of equipment or software is enjoined, the Bidder shall promptly, at its own expense, modify or replace the infringing equipment or software so that it no longer infringes but remains functionally equivalent, or obtain for the Owner a license or other right to use the equipment or software. This shall be in addition to any other rights or claims, which the Owner may have. The Bidder shall, at its own expense, (and the Owner agrees to permit Bidder to do so,) defend any suits which may be instituted by any party against the Owner for alleged infringement of patents, copyright, trademark, or violation of trade secrets relative to the Bidder's performance hereunder. Either party shall notify the other promptly of any such claims, and the Owner shall give to the Bidder full authority and opportunity to settle such claims, and shall reasonably cooperate with the Bidder in obtaining information relative to such claims.

Section 7. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable laws, statutes, ordinances, rules, and regulations. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), the Anti-Kickback Acts, as amended (40 U.S.C. 276c; 41 U.S.C. 51 *et seq.*), and any rules and regulations issued pursuant thereto, and 18 U.S.C. 201, 286, 287, 641, 666, 874, 1001, 1361 and 1366, as amended.

The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985-1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR part 3017.

The Bidder represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

Article V

Remedies

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder in the material, equipment, or software furnished hereunder, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within thirty (30) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof,

satisfactory to both the Owner and the Administrator, shall have been made by the Bidder, the Owner may take over the performance of the Bidder's obligations hereunder and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder, and the Bidder shall be liable to the Owner for any supportable cost or expense in excess of the bid price occasioned thereby. The Owner, in such contingency, may exercise any rights, claims, or demands which the Bidder may have against third persons in connection herewith and for such purpose the Bidder does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

Section 2. Liquidated Damages. Should the Bidder fail to complete any Project as shown under Column 5, "Completion of the Project," in Article I, section 1, due to circumstances or events under control of the Bidder, within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall, so long as the subject Project shall not have been placed in service, have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder, the sum of:

_____ dollars (\$ _____)
for

(Project) _____ dollars (\$ _____)
for

(Project) _____ dollars (\$ _____)
for

(Project) _____
per day for each and every day that such completion is delayed beyond the scheduled time for Completion of the Project, as liquidated damages and not as a penalty, up to the amount of the respective Base Bid plus accepted alternates for the affected Project; provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount claimed as liquidated damages was computed. The Bidder shall pay to the Owner the amount necessary to effect such payment in full. Such payment is not to be reduced by the value of any partial performance by the Bidder.

At the technical sessions, each Bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner allows these features to be bid as separate Projects, then they are to be individually listed under Columns 1 through 8, in Article I, section 1. These unproven features and capabilities are to be individually listed in this section 2 also, with liquidated damages amounts determined by the Owner and stated for each. If a Bidder neglects to identify any such feature at the technical session, delay in providing the feature is considered a delay in completing

the associated Project and the Owner may assess liquidated damages listed for that Project regardless of whether the Project is placed in service.

Section 3. Consequential Damages. In no event shall the Bidder's liability for incidental or consequential loss or damage, except for personal injury or tangible property damage, exceed the amount of 10 times the total contract price, as amended.

Section 4. Enforcement of Remedies by Administrator. The Administrator may on behalf of the Owner exercise any right or enforce any remedy, which the Owner may exercise or enforce hereunder.

Section 5. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election; provided, however, that the provisions of section 2 of this Article V shall be the exclusive measure of damages for failure by the Bidder to have effected the Completion of Project within the time herein agreed upon.

Article VI

Equal Employment

Section 1. The Bidder.

(a) The Bidder represents that:

(1) It has, _____ does not have _____, 100 or more employees, and if it has, that

(2) It has _____, has not _____, furnished the Equal Employment Opportunity Employers Information Report EEO-1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246, as amended, and Title VII of the Civil Rights Act of 1964.

(b) The Bidder agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

(c) The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than \$10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this proposal.

(d) The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal

Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 2. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which the Bidder has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Contractor's books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination

clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in the said Executive Order 11246 or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including actions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 3. Equal Employment Opportunity Specifications.

(a) As used in these specifications:

"Covered area" means the geographical area described in the solicitation from which this contract resulted;

"Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

"Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941; and "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(b) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the

Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(c) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(d) The Contractor shall implement the specific affirmative action standards provided in paragraphs (g) (i) through (xvi) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the **Federal Register** in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take specific affirmative actions to ensure equal

employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(i) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(ii) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(iii) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

(iv) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(v) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (g)(ii) above.

(vi) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on

bulletin boards accessible to all employees at each location where construction work is performed.

(vii) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(viii) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

(ix) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(x) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

(xi) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(xii) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(xiii) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

(xiv) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(xv) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female

contractor associations and other business associations.

(xvi) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(h) Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (g)(i) through (xvi). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (g)(i) through (xvi) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of Executive Order 11246 if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246 and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246.

(m) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of these specifications, so as to achieve maximum

results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Section 4. In this Article VI.

(a) The term "Contractor" shall also mean "Bidder" or "Subcontractor" as applicable.

(b) The provisions of sections 2 & 3 are applicable to the extent required by law. In determining whether these sections are applicable, reference should be made to Office of Federal Contract Compliance Programs regulations (41 CFR Part 60).

Article VII

Miscellaneous

Section 1. Definitions.

The term "Completion of the Contract" shall mean accomplishment of completion of the Project for all central offices (and associated remote switching terminals), features and services listed under Column 1, "Project," in Article I, section 1, and all alternates accepted by the Owner, on the Owner's acceptance.

The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations herein set out and all amendments and revisions thereof for a central office (and all associated remote switching terminals), feature or service. The scheduled date for completion of the Project is ninety (90) days after delivery as specified under Column 4, "Delivery," in Article I, section 1, as amended or adjusted under Article II, section 1, and section 3. The scheduled date for Completion of the Project is the date from which liquidated damages are computed. The actual date of completion of the Project shall be the date of the receipt by the Owner from the Bidder of written notification that all deficiencies listed on the results of acceptance tests have been

corrected; provided, that the final inspection and tests by the Owner finds the deficiencies satisfactorily resolved. If the deficiencies have not been satisfactorily resolved, the actual date of completion of the Project shall be the date that the deficiencies are fully and satisfactorily resolved as determined by subsequent Owner's tests. The Certificate of Completion approved and signed by the Owner and approved in writing by the Administrator shall be conclusive evidence as to the fact of Completion of the Project and the date thereof. Full compliance with the procedure for "Completion of the Project" and an individual Certificate of Completion is required for each Project listed under Column 1, "Project," in Article I, section 1.

The "Contract" shall consist of the Notice and Instructions to Bidders, the Bidder's proposal and the Owner's acceptance, and the Specifications.

The term "days" shall mean calendar days.

The term "minor errors or irregularities" shall mean a defect or variation in a Bidder's bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other Bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the Owner determines whether an error or irregularity is "minor."

The term "placed in service" shall mean used by the Owner to earn revenue.

The term "Project" shall mean a central office and all associated remote switching terminals (if any), a remote switching terminal if purchased without a supporting central office, a feature (or group of features), or a service (or group of services), which is listed under Column 1, "Project," in Article I, section 1. The only instance in which a remote switching terminal can constitute a separate Project is where such remote switching terminal is purchased with associated modifications to its supporting host switch but no other modifications to the host switch are specified. A Project will have a single completion schedule listed under Column 5 "Completion of the Project," in Article I, section 1, and a single liquidated damages amount shown in Article V, section 2. The Contract may consist of one or more Projects.

The term "Software" shall mean computer programs contained on a tape, disc, semiconductor device or other memory device or system memory consisting of logic instructions and instruction sequences in machine-readable object code, which manipulate data in the central processor, control and perform input/output operations, perform error diagnostic and recovery routines, control call processing, and perform peripheral control, and administrative and maintenance functions; as well as associated documentation, excluding source code, used to describe, maintain, and use the programs provided under the Contract.

The term "Specifications" shall mean the minimum performance requirements of the Owner as contained in the documents listed below, and attached to this agreement:

RUS Form _____
dated _____

RUS Form _____
dated _____
RUS Form _____
dated _____
RUS Form _____
dated _____

requirements may have been amended by specific written exceptions in the Bidder's proposal which have been agreed to by the Owner and accepted by the Administrator.

Section 2. Continuing Equipment Support—Parts, Service, and Software. In addition to warranty repairs and replacement, the Bidder shall offer repair service and repair parts to the Owner in accordance with the Bidder's practices and terms then in effect, for the Bidder's manufactured equipment furnished pursuant to this Agreement. Such repair service or repair parts shall be available for as long as the Bidder is manufacturing or stocking such equipment, or for no less than eight (8) years after the Bidder has ceased manufacturing or offering such equipment for sale. The Bidder shall also offer software support services to the Owner in accordance with the Bidder's practices, terms, and charges then in effect, but in any event for no less than five (5) years after the Bidder has ceased manufacturing or offering for sale such software.

Section 3. Materials and Supplies. The Bidder shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States, or in any eligible country, substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, or in any eligible country, provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly authorize in writing such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For purposes of this section, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative. The Bidder agrees to submit to the Owner such certificate or certificates, signed by the Bidder and all subcontractors, with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 4. Confidentiality. All information supplied by the Bidder to the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Owner, shall be treated by the Owner as confidential information, and the Owner shall not reproduce any such information except for its own internal use and as authorized by this Contract, and shall use any information only for archival backup, in-house training, operating, maintenance, and administrative

purposes and in conjunction with its use of the equipment, materials, and software furnished hereunder. All information supplied to the Bidder by the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Bidder, shall be treated by the Bidder as confidential information, and shall not be used by the Bidder for any purpose adverse to the interests of the Owner, and shall not be reproduced or distributed by the Bidder except for the Bidder's use in its performance under this Contract. The foregoing confidentiality obligations do not apply to information which is independently developed by the receiving party or which is lawfully received by the receiving party free of restriction from another source having a right to so furnish such information, or is already known to the receiving party at the time of disclosure free of restriction. If the Bidder has failed to provide continuing equipment support as described in Article VII, section 2, the Owner is released from this obligation. This provision does not restrict release of information by the United States of America pursuant to the Freedom of Information Act or other legal process.

Section 5. Entire Agreement. The terms and conditions of this Contract as approved by RUS supersede all prior oral or written understandings between the parties. There are no understandings or representations, expressed or implied, not expressly set forth herein.

Section 6. Survival of Obligations. The rights and obligations of the parties, which by their nature, would continue beyond the termination, cancellation, or expiration of this Contract, shall survive such termination or expiration.

Section 7. Non-Waiver. No waiver of any terms or conditions of this Contract, or the failure of either party to enforce strictly any such term or condition on one or more occasions, shall be construed as a waiver of the same or of any other terms or conditions of this Contract on any other occasion.

Section 8. Releases Void. Neither party shall require releases or waivers of any personal rights from representatives or employees of the other in connection with visits to its premises, nor shall such parties plead such releases or waivers in any action or proceeding.

Section 9. Nonassignment of Contract. The Bidder shall not assign the Contract, effected by acceptance of this proposal, or any part hereof, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof, without the approval in writing of the Owner, the Surety, and the Administrator.

Section 10. Choice of Law. The rights and obligations of the parties and all interpretations and performance of this Contract shall be governed in all respects by the laws of the State of _____ except for its rules with respect to the conflict of laws.

Section 11. Approval of the Administrator. The acceptance of this proposal by the Owner shall not create a contract unless such

acceptance shall be approved in writing by the Administrator within ninety (90) days after the date hereof:

By _____
(Signature of Bidder)

(Name—Type or Print)

(Title)

(Company Name of Bidder)

(Address of Bidder)

Attest: _____

(Secretary)

(Date)

The proposal must be signed with the full name of the Bidder. In the case of a partnership, the proposal must be signed in the firm name by each partner. In the case of a corporation, the proposal must be signed in the corporate name by a duly authorized officer and the Corporate seal affixed and attested by the Secretary of the Corporation. (If executed by other than the President, a Vice-President, the partners or the individual owner, a power of attorney or other legally acceptable document authorizing execution shall accompany this contract, unless such power of attorney is on file with RUS.)

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the proposal of

_____ for the Project(s) herein described for the
Total Base Bid of \$ _____ and

Alternate For

Spare Parts, Item(s) \$

Maintenance Tools, Item(s) \$

Alternate No. 1 add (deduct) \$

Alternate No. 2 add (deduct) \$

Alternate No. 3 add (deduct) \$

Alternate No. 4 add (deduct) \$

Alternate No. 5 add (deduct) \$

Alternate No. 6 add (deduct) \$

The total contract price is \$

By _____
Owner

President

Attest: _____

Secretary

Date Of Acceptance

Dated: December, 7, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98-32883 Filed 12-10-98; 8:45 am]

BILLING CODE 3410-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV-034-0113; FRL-6200-7]

Approval and Promulgation of Implementation Plans; Nevada State Implementation Plan Revision, Clark County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Nevada State Implementation Plan (SIP). This action specifically includes proposed approval of revisions to Clark County Health District's wintertime oxygenated fuels program. The intended effect of this SIP revision is principally to regulate CO emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposal will incorporate it into the federally approved SIP for the Clark County nonattainment area. EPA has evaluated this revision and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Comments may be mailed to: Air Planning Office [AIR-2], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the SIP revision and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted SIP revision are also available for inspection at the following locations:

Nevada Division of Environmental Protection, Bureau of Air Quality, 123 W. Nye Lane, Carson City, NV
Clark County Health District, PO Box 3902, 625 Shadow Lane, Las Vegas, NV

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Air Planning Office (AIR-2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, (415) 744-1225.

SUPPLEMENTARY INFORMATION:

I. Applicability

The revision being proposed for approval into the Nevada SIP includes: