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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1753 and 1755

RIN 0572-AC29

New Equipment Contract, RUS Contract Form 395 for Telecommunications and Broadband Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), hereinafter referred to as RUS or the Agency, is issuing a final rule to streamline the contractual process for equipment procurement by replacing type-specific equipment contracts, RUS Forms 397, 398, 525, 545, and associated documents (Forms 231, 396, 396a, 517, 525a, 744, 752a, 754, and addenda) with a new, unified Equipment Contract, RUS Contract Form 395 and associated close-out documents (Forms 395a, 395b, 395c and 395d) and by removing construction standards RUS Forms 397b, 397c, 397d, 397f, 397g, 397h. On October 1, 2015, RUS published a Request for Comments in the *Federal Register*, to establish a

new equipment contract and associated policies for Telecommunications and Broadband Borrowers, Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395).

DATE: This final rule is effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Aylene Mafnas, Chief, Engineering Branch, Policy and Outreach Division, Rural Utilities Service, Telecommunications Program, U.S. Department of Agriculture, STOP 1599, 1400 Independence Ave., SW, Washington, DC 20250-1550, Telephone number: (202) 690-4673.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 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 effect will be given to this rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. §

6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 12372

This final rule is not subject to the requirements of Executive Order 12372, “Intergovernmental Review”, as implemented under USDA’s regulations at 7 CFR part 3015.

Regulatory Flexibility Act Certification

RUS has determined that this final 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.*). RUS provides loans to borrowers at interest rates and on 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.

Environmental Impact Statement

This final rule has been examined under Agency environmental regulations at 7 CFR part 1794. The Administrator has determined that this is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to this program is 10.851. The Catalog is available on the Internet at <http://www.cfda.gov>.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

E-Government Act Compliance

RUS is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 imposes requirements on RUS in the development of regulatory policies that have tribal implications or preempt tribal laws. RUS has determined that this rule does not have a substantial direct effect on one or more Indian tribes(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this final rule has implications of which RUS is not aware and would like to engage in consultation with RUS on this rule, please contact the Rural Development Native American Coordinator at (720) 544-2911 or AIAN@wdc.usda.gov

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Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or

contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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USDA is an equal opportunity provider, employer, and lender.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this final rule are pending approval by OMB pursuant to the Paperwork Reduction Act 1995 (44 U.S.C. Chapter 35) under control number 0572-NEW. The paperwork contained in this rule will not be effective until approved by OMB.

Background

Rural Development is a mission area within the U.S. Department of Agriculture comprising the Rural Utilities Service, Rural Housing Service and Rural Business/Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan

guarantees, grants and technical assistance through more than 40 programs aimed at creating and improving housing, businesses and infrastructure throughout rural America.

The Rural Utilities Service (RUS) loan, loan guarantee and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecom and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, conservation and cultural and historic preservation.

In order to continue to facilitate the programmatic interest of the Rural Electrification Act of 1936 (the “RE Act”), as amended (7 U.S.C. 901 *et seq.*), that loans and loans guaranteed by RUS are adequately secured, RUS has established the use of certain standardized forms for materials, equipment, and construction of electric and telecommunications systems. The use of standard forms, construction contracts, and procurement procedures help to assure that appropriate standards and specifications are maintained by the borrower in order to not adversely affect RUS’s loan security, and ensure that loan and loan guarantee funds are effectively used for the intended purpose(s).

RUS may, from time to time, promulgate new contract forms or revise or eliminate existing contract forms. In so doing, RUS is required by 7 CFR 1755.29, to publish a notice of rulemaking in the *Federal Register* announcing, as appropriate, a revision in, or a proposal to amend § 1755.30(c). List of telecommunications standard contract forms. On February 12, 2014, RUS published a proposed rule in the *Federal Register* (79 FR 8327) to establish a new equipment contract and associated policies for Telecommunications and Broadband Borrowers, Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) under 7 CFR Parts 1753 and 1755. RUS Contract Form 395 reflects present business and RUS practices, as well as

changes in technology, services and equipment. The Agency also issued a Request for Comments notice which published in the *Federal Register* on Thursday, October 1, 2015 at 80 FR 59080, providing the public with an additional opportunity for public comment. Comments were received by the Agency which are summarized and addressed in the Comments Section of this final rule.

In response to changes in competition, legislation, technologies, and regulation which have resulted in changes to business practices in the communications industry, RUS has undertaken a comprehensive review of its Telecommunications and Broadband Programs' contracts and contracting procedures. The purpose of this undertaking is to streamline the contractual process for equipment procurement and improve the customer service provided to the RUS rural telecommunications and broadband borrowers.

Under this rulemaking, the new equipment contract RUS Contract Form 395 and the associated close-out documents (Forms 395a, 395b, 395c and 395d) *replace* the current equipment specific contracts, RUS Forms 397, 398, 525, 545, and the associated close-out documents (Forms 231, 396, 396a, 517, 744, 752, 752a, and 754). Furthermore, along with the elimination of the RUS Form 397, the associated construction standards RUS Forms 397b, 397c, 397d, 397f, 397g, 397h have also been eliminated. The contract terms and obligations included in the new RUS Contract Form 395 reflect current RUS and private sector industry practices, as well as changes in technology, services and equipment. This final rule also removes references to Informational Publication (I.P.) 344-2, "List of Material Acceptable for Use on Telecommunications Systems of RUS Borrowers" (List of Materials) from the Telecommunications Program regulations. The maintenance and use of this list was discontinued by memorandum from the Agency Administrator dated May 23, 2011. Instead, in order to

protect RUS's loan security and compliance with continuing Buy America statutory mandates, the Agency has incorporated an approach into the review of individual projects and the approval of loan advances for this purpose. Traditional telecommunications borrowers and broadband borrowers will both benefit from use of the new RUS Contract Form 395 contract as it reflects many of the changes the telecommunications industry has experienced as it has technologically transitioned from narrowband to broadband. The new RUS Contract Form 395 can assist RUS borrowers with the purchase of equipment specifically designed to meet or exceed the requirements of either narrowband or broadband systems.

Comments

On February 12, 2014, RUS published a proposed rule in the *Federal Register* (79 FR 8327) to establish a new equipment contract and associated policies for Telecommunications and Broadband Borrowers, Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) under 7 CFR Parts 1753 and 1755. The Agency also issued a Request for Comments notice in the *Federal Register* on Thursday, October 1, 2015 at 80 FR 59080, providing the public with an additional opportunity for public comment. Comments were received by the Agency which are summarized and addressed in this section of the final rule.

Comments specifically concerning the new contract were submitted by Osmose Communications Services, LLC and by ACE, The Association of Communications Engineers. Two (2) comments were submitted on behalf of Osmose Communications Services, LLC and twenty-four (24) comments on behalf of ACE. Additionally, the Bloom Corporation submitted general comments non-related to the RUS Contract Form 395.

Osmose Communications Services, LLC

Issue 1: The two (2) comments submitted on behalf of Osmose Communications Services, LLC concerned the provisions of the contract form to accommodate a buyer's request for partial or staged delivery of equipment covered under the contract.

RUS Response: As written, the RUS Contract Form 395 already supports agreements for staged delivery by appropriately filling in the agreed to information in the table that comprises Schedule 1. Due to the fact that Schedule 1 is part of the contract, the delivery schedule is acknowledged by both parties of the contract by the signatures of offer and acceptance.

Association of Communications Engineers (ACE)

Issue 1: Twenty-two (22) comments submitted on behalf of ACE were editorial in nature, providing typographical correction, consistency with other RUS contracts, and/or section clarity.

RUS Response: RUS accepts these suggestions and has incorporated those suggestions into the document.

Issue 2: ACE referenced the notice published in the *Federal Register* on October 1, 2015, that RUS technical specifications 397b, 397c, 397d, 397g, and 397h are not being replaced as stated in the notice.

RUS Response: RUS agrees. The Final Rule will state that these documents are being eliminated rather than replaced.

Issue 3: ACE commented that they support RUS' inclusion of sales and use tax in Schedule 2 of RUS Contract Form 395.

RUS Response: RUS acknowledges the comment.

Bloom Corporation

Comments *not* specifically related to the new Equipment Contract, Form 395 were submitted on behalf of the Bloom Corporation, Bellevue, WA. In summary, the comment stated that as presently written, the revised regulations do not adequately ensure equipment purchased using program funds are in compliance with the “Buy American” Requirement of the Rural Electrification Act of 1936, as amended. The comments are summarized below with the Agency’s responses as follows:

Issue 1: Commenter states that only a manufacturer can certify Buy American compliance. Proposed regulations allow RUS Form No. 213 (Buy American) to be signed by a “Contractor”, “Subcontractor”, “Seller” or “Material Supplier”.

RUS Response: The RUS Contract Form 395 does not include changes to Form 213 or its associated policy. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project. Addressing changes to Buy American regulations or the procedure for certification is not within the scope of this rulemaking.

Issue 2: Commenter states that only RUS can confirm that a Buy American Certification is adequate and in line with statutory requirements. Proposed regulations abdicate this oversight function to a “Contractor”, “Subcontractor”, “Seller” or “Material Supplier”. RUS can rely on borrowers and their engineers to ascertain conformance with relevant standards but not the Buy American Act requirement.

RUS Response: The RUS Contract Form 395 does not include changes to Form 213 or its associated policy. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project. Changes to Buy American regulations or the procedure for certification is not within the scope of this rulemaking.

Issue 3: Commenter states that if RUS never possesses the signed Buy American Certification, their role is not one of oversight, but is reduced to one of administration only. The proposed regulations do not require borrowers to submit the Buy American Certification paperwork they assembled to RUS. Without that paperwork, RUS is entrusting borrowers to enforce the statutory Buy American requirement in a way the Commenter believes they are not permitted.

RUS Response: The procedure specifies the requirement that the certification be maintained and presented to RUS if and when requested.

Issue 4: Commenter states that retiring the Information Publication (I.P.) 344-2, “List of Material acceptable for Use on Telecommunications Systems of RUS Borrowers” reference tool, while still requiring that equipment be in compliance with the Buy American Act, will create an exponential increase in work for borrowers and engineers as they are left to their own devices to determine Buy American compliance, a function the RUS List of Materials once performed. The proposed regulations intentionally or not will require every borrower, for every project, for every component to ascertain Buy American compliance by their own means. And in turn every manufacturer will have to address every inquiry, for every component, from every borrower on a case-by-case basis. The RUS List of Materials was created to avoid this exact scenario.

RUS Response: In an open letter from the Rural Utilities Service (RUS) Administrator on May 23, 2011, it was announced that RUS would no longer accept applications for equipment to be added to the List of Materials for Telecommunications and immediately ceased publication of the List of Materials for Telecommunications. To protect the Agency's loan security and compliance with continuing Buy America statutory mandates, RUS transitioned from a listing process to an approach which ensures that construction financed by RUS meets applicable industry standards. This approach has been incorporated into the Agency's review of individual projects and the approval of loan advances. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project and not to reinstate the listing process.

Issue 5: Commenter states that RUS should create and maintain a Buy American Registry listing of all the equipment for which RUS themselves have collected documented proof are compliant with the Buy American Act. Such a list will resolve most if not all of the issues I raise.

RUS Response: The discontinuance of the RUS List of Material, under which the Buy American registry would be maintained, was announced by the RUS Administrator in an open letter on May 23, 2011. The purpose of this rulemaking is to streamline the contractual process for the RUS Borrower and expedite the approval process of equipment during the duration of the project and not to reinstate a listing process.

List of Subjects

7 CFR Part 1753

Communications equipment, Loan programs-Telecommunications, Reporting and recordkeeping requirements, Rural areas, and Telephone.

7 CFR Part 1755

Loan programs- Telecommunications; Reporting and recordkeeping requirements, Rural areas, and Telecommunications.

For the reasons set forth in the preamble, the Rural Utilities Service is amending Chapter XVII of Title 7 of the Code of Federal Regulations as follows:

PART 1753 – TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1753 continues to read as follows:

Authority: 5 U.S.C. 501, 7 U.S.C. 901 *et seq.*

Subpart A - General

2. Amend §1753.2:

a. By removing the definition of “RTB”;

b. By revising the definitions of “Contract” and “Project” to read as follows:

§1753.2 Definitions.

* * * * *

Contract - “Contract” means collectively the Seller’s Proposal, Seller’s Technical Proposal including any general or feature descriptions, equipment lists, Seller’s responses to the Buyer’s specifications and Performance Requirements, the Buyer’s Acceptance, Articles I through X herein, the Performance Requirements, and the Contractor’s Bond when required by the Buyer.

* * * * *

Project - “Project” means any equipment, including but not limited to switching, routing, access, video, and/or transport equipment, which will be used in the delivery of voice, video, or data services, which are listed under Column 2, “Equipment,” in Schedule 1 hereto. A Project will have a single delivery and completion schedule listed under Column 7 and Column 8. The Contract may consist of one or more Projects.

* * * * *

3. Amend §1753.6 by revising paragraph (a) to read as follows:

§ 1753.6 Standards, specifications, and general requirements.

(a) Materials, equipment, and construction financed with loan funds must meet the standards and specifications established by RUS in 7 CFR 1755.97 which lists the RUS Bulletins containing the standards and specifications for telephone facilities.

* * * * *

4. Amend §1753.7 by:

- a. Revising paragraph (c),
- b. Removing paragraph (f)(4).

The revision reads as follows:

§ 1753.7 Plans and specifications (P&S).

* * * * *

(c) The appropriate standards and specifications listed in 7 CFR part 1755 shall be included in the P&S. When RUS has not prepared standards and specifications, the borrower shall use all appropriate project specific engineering requirements and specifications prepared by the borrower's engineer. The specifications prepared by the borrower's engineer and based on appropriate project specific engineering requirements shall be subject to review and approval by RUS for all major construction, including major projects which would be exempted from RUS approval under paragraph (e) of this section.

* * * * *

5. Amend §1753.9 by revising paragraphs (a) and (c) to read as follows:

§ 1753.9 Subcontracts.

(a) RUS construction contract Forms 257, 395, and 515, contain provisions for subcontracting. Reference should be made to the individual contracts for the amounts and conditions under which a contractor may subcontract work under the contract.

* * * * *

(c) As stated in contract Forms 257, 395, and 515, the contractor shall bear full responsibility for the acts and omissions of the subcontractor and is not relieved of any obligations to the borrower and to the Government under the contract.

* * * * *

Subpart B-Engineering Services

6. Amend § 1753.18 by revising paragraph (c) to read as follows:

§ 1753.18 Engineer and architect contract closeout certifications.

* * * * *

(c) A statement that construction used was in accordance with specifications published by RUS covering the construction which were in effect when the contract was executed, or in the absence of such specifications, that it meets other applicable specifications and standards and that it meets all applicable national and local code requirements as to strength and safety.

* * * * *

Subpart E—Purchase and Installation of Central Office Equipment

7. Amend §1753.36 by revising paragraphs (b), (c), (e), and (g) to read as follows:

§ 1753.36 General.

* * * * *

(b) Terms used in this subpart are defined in §1753.2 and Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395).

(c) Borrowers shall use RUS Contract Form 395, and associated RUS Form 395a, Equipment Contract Certificate of Completion (Including Installation), when the firm supplying the equipment will install it and RUS Contract Form 395 and associated RUS Form 395b, Equipment Contract Certificate of Completion (Not Including Installation) when the supplier of the equipment will not be installing it. In either case the appropriate specifications shall be included in the contract.

* * * * *

(e) The borrower shall take sealed competitive bids for all central office equipment to be purchased under RUS Contract Form 395 using the procedure set forth in Sec. 1753.38(a), unless RUS approval to negotiate is obtained.

* * * * *

(g) Materials and equipment must meet the standards and general specifications approved by RUS.

* * * * *

8. Amend §1753.37 by revising paragraphs (a) and (b) to read as follows:

§ 1753.37 Plans and specifications (P&S).

(a) *General.* (1) Prior to the preparation of P&S, the borrower shall review with the GFR the current and future requirements for central office equipment.

(2) The P&S shall specify the delivery and completion time required for each exchange.

(3) P&S for equipment to be provided under an Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) contract without installation shall require the supplier to provide specific installation information and a detailed bonding and grounding plan to be utilized by the engineer, borrower, and others responsible for the installation of the equipment.

(b) *Preparation of P&S.* The P&S shall include RUS Contract Form 395, Notice and Instructions to Bidders, specifications for the required equipment for each exchange, provision for spare parts, and all other pertinent data needed by the bidder to complete its proposal.

* * * * *

9. Amend §1753.38 by:

a. Revising paragraphs (a)(1)(i), (a)(1)(iii), (a)(2)(i)(J), and (a)(2)(i)(K)(v);

b. Revising paragraph (b)(10);

c. Removing paragraph (c) and redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e); and

d. Revising newly redesignated paragraphs (d)(3) and (d)(5).

The revisions read as follows:

§ 1753.38 Procurement procedures.

(a) * * *

(1) * * *

(i) After RUS approval of the specifications and equipment requirements (required only for projects expected to exceed \$500,000 or 25% of the loan, whichever is less), the borrower shall send "Notice and Instructions to Bidders" to suppliers with central office equipment.

* * * * *

(iii) Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) shall be used, except that the "Notice" shall state that prior to the bid opening a technical session will be conducted with each supplier to resolve any questions related to the technical proposal submitted by the supplier. The suppliers' technical proposals should be requested for presentation 30 days in advance of the bid opening to enable sufficient time to make the technical evaluation.

* * * * *

(2) * * *

(i) * * *

(J) Some types of equipment contain software. RUS Contract Form 395 indicates whether the equipment contains software and whether the software contract stipulations are applicable.

(K) * * *

(v) After evaluation of the technical proposals and RUS approval of the changes to P&S (required only for projects that are expected to exceed \$500,000 or 25% of the loan, whichever is less), sealed bids shall be solicited from only those bidders whose technical proposals meet P&S

requirements. When fewer than three bidders are adjudged qualified by the borrower to bid, RUS approval must be obtained to proceed. Generally, RUS will grant such approval only if the borrower can demonstrate to the satisfaction of RUS that a good faith effort was made to obtain at least three competitive bids.

* * * * *

(b) * * *

(10) Installation of the central office equipment and materials provided under RUS Contract Form 395 may be made in accordance with subpart I, if applicable, or by an approved Force Account Proposal (FAP).

* * * * *

(d) * * *

(3) If RUS approval was required by paragraph (d)(2) of this section, upon RUS approval the purchase may be made using RUS Contract Form 395, or when applicable, the procedures contained in subpart I of this part.

* * * * *

(5) Installation of the central office equipment and materials procured by RUS Contract Form 395 without installation may be made in accordance with subpart I, if applicable, or by an approved FAP.

* * * * *

10. Revise §1753.39 to read as follows:

§ 1753.39 Closeout documents.

Closeout of Equipment Contract, RUS Contract Form 395(RUS Contract Form 395)

(including or not including installation) shall be conducted as follows:

(a) *Contract amendments.* Amendments that must be submitted to RUS for approval, as required by § 1753.11, shall be submitted promptly. All other amendments may be submitted to RUS with the engineer's contract closeout certification.

(b) *Acceptance tests.* The borrower will perform acceptance tests as part of the partial closeout and final closeout of RUS Contract Form 395 that will demonstrate compliance with the requirements as specified by the borrower's engineer in the Performance Requirements. Other tests demonstrating compliance will be acceptable.

(c) *Grounding system audit.* A grounding system audit shall be performed and found acceptable for equipment provided under RUS Contract Form 395, (including or not including installation), prior to placing a central office or remote switching terminal into full service operation. The audits are to be conducted in accordance with the requirements specified by the borrower's engineer in the Performance Requirements. The audits shall be performed by the contractor and borrower when using the RUS Contract Form 395 with equipment installation and by the borrower when using the RUS Contract Form 395 without equipment installation.

(d) *Partial Closeout Procedure.* Under conditions set forth in RUS Contract Form 395, a contractor may, when approved by the borrower, receive payment in full for central offices and their respective associated remote switching terminals upon completion of the installation without awaiting completion of the project. The contractor is to receive such payment, according to procedures contained in the applicable sections of RUS Contract Form 395. In addition to complying with the appropriate partial closeout procedure contained in RUS Contract Form 395, the borrower shall:

- (1) Obtain from the engineer a certification of partial closeout; and
- (2) Submit one copy of the summary to RUS with an FRS.

(e) *Final contract closeout procedure.* The documents required for the final closeout of the equipment contract, RUS Contract Form 395 with or without installation, are listed in the Table 1 to paragraph (e), which also indicates the number of copies and their distribution.

Table 1 to paragraph (e) - Documents REQUIRED to Close Out Equipment Contract, RUS Contract Form 395.

RUS Form No.	Description	No. of Copies prepared by		Distribution	
		Seller	Engineer	Buyer	Seller
213	Certificate (Buy American)	1..... ...	..... .....	1.....	
238	Construction or Equipment Contract Amendment (If not previously submitted, send to RUS for approval)		3 sent to RUS..... ...	1 from RUS..... ...	1 from RUS.
395a	Certificate of Completion for Equipment Contract (Including Installation)	..... .....	2.....	1.....	1.
395b	Certificate of Completion for Equipment Contract (Not Including Installation)	..... .....	2.....	1.....	1.
395c	Certificate of Contractor and Indemnity Agreement (Use only for installation contracts)	1..... ...	..... .....	1.....	
None	Report in writing, including all measurements, any acceptance test report and other information required under Part II of the applicable specifications (Form 395d may be used)	..... .....	1.....	1.....	
None	Set of maintenance recommendations for all equipment furnished under the contract	1..... .....	..... .....	1.....	

(f) Once RUS approval has been obtained for any required amendments, the borrower shall obtain certifications from the engineer that the project and all required documentation are

satisfactory and complete. The requirements for the final contract certification are contained in §1753.18.

(g) Once these certifications have been received, final payment shall be made according to the payment terms of the contract. Copies of the certifications shall be submitted with the FRS, requesting the remaining funds on the contract.

Subpart H – Purchase and Installation of Special Equipment

11. Revise §1753.66 to read as follows:

§ 1753.66 General.

(a) This subpart implements and explains the provisions of the Loan Documents setting forth the requirements and the procedures to be followed by borrowers in purchasing and installing special equipment financed with loan funds.

(b) Terms used in this subpart are defined in §1753.2 and Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395).

(c) Borrowers must obtain RUS review and approval of the LD for their telephone systems. Applications of equipment not included in an approved LD must conform to the modernization plan as required by 7 CFR part 1751, subpart B, and must be submitted to RUS for review and approval.

(d) RUS Contract Form 395 and applicable specifications shall be used for the purchase of special equipment for major construction on a furnish-and-install basis, as well as on a furnish-only basis.

(e) The procedures provided in subpart I, if applicable, or a FAP approved by RUS may be used for the installation of special equipment purchased with a RUS Contract Form 395 contract not including installation.

(f) For special equipment purchases for minor construction, the borrower may at its option use the Methods of Minor Construction procedures contained in subpart I or the purchase procedures contained in this subpart H.

(g) Some types of special equipment contain software. RUS Contract Form 395 indicates whether the equipment contains software and whether the software contract stipulations are applicable.

12. Revise §1753.67 to read as follows:

§ 1753.67 Contracts and specifications.

(a) Equipment Contract, RUS Contract Form 395 shall be used to purchase equipment on a furnish- and-install basis, as well as on a furnish-only basis.

(b) The equipment specifications must accompany the equipment contract form and each specification consists of performance specifications, installation requirements (if applicable), and application engineering requirements.

13. Amend §1753.68:

a. In paragraph (a)(1)(iv) by removing the term “Form 398 Contract” and adding in its place “Equipment Contract, RUS Contract Form 395 (RUS Contract Form 395) without installation” ;

b. In paragraph (a)(8) by removing the term “Form 397” and adding in its place “RUS Contract Form 395”;

c. By revising paragraph (a)(9);

d. In the heading of paragraph (d)(1) by removing the term “Form 397” and adding in its place “RUS Contract Form 395 with installation” ;

e. By revising paragraph (d)(2) ;

f. In paragraph (d)(3)(i) by removing the phrase “special equipment contract” and adding in its place the phrase “equipment contract”; and

g. By revising the table in paragraph (d)(3)(i).

The revisions read as follows:

§ 1753.68 Purchasing special equipment.

(a) * * *

(9) The specifications for the various applications of equipment is prepared by the RUS borrower’s engineer and based on generally accepted engineering considerations and practices found in the Telecommunications Industry.

* * * * *

(d) * * *

(2) Acceptance tests for RUS Contract Form 395 without installation. (Upon completion of the installation and alignment of the equipment (under this contract the installation alignment will be by other than the seller) the borrower shall perform all the inspections and tests outlined in the specifications.

* * * * *

Table 1 to paragraph (d)(3)(i) - Documents Required to Close Out Equipment Contract, RUS Contract Form 395 –

RUS Form No.	Description	No. of Copies prepared by		Distribution	
		Seller	Engineer	Buyer	Seller
213	Certificate (Buy American)	1.....	.....	1.....	
238	Construction or Equipment Contract Amendment (If not previously submitted, send to RUS for approval).	.....	3 sent to RUS.....	1 sent to RUS...	1 from RUS.
395a	Certificate of Completion for Equipment Contract (Including Installation).	.....	2.....	1.....	1.
395b	Certificate of Completion for Equipment Contract (Not Including Installation).	.....	2.....	1.....	1.
395c	Certificate of Contractor and Indemnity Agreement (Use only for installation contracts).	.....	.....	1.....	
None	Report in writing, including all measurements, any acceptance test report and other information required under Part II of the applicable specifications. (Form 395d may be used.)	.....	1.....	1.....	
None	Set of maintenance recommendations for all equipment furnished under the contract	1.....	.....	1.....	

* * * * *

Subpart I – Minor Construction

14. Amend §1753.80 by:

a. Removing in paragraph (b)(3) the phrase “special equipment” and adding in its place “equipment”; and

b. Revising paragraph (d)(2).

The revision reads as follows:

§1753.80 Minor construction procedure.

* * * * *

(d) * * *

(2) All standard RUS procedures are followed, including the application of RUS construction practices (see §1753.6).

* * * * *

Subpart J – Construction Certification Program

§ 1753.93 [Amended]

15. In § 1753.93, remove paragraphs (b)(7) and (8) and redesignate paragraphs (b)(9) through (13) as (b)(7) through (11).

§ 1753.96 [Amended]

16. Amend the Certification Addendum in § 1753.96 by removing the words “or Rural Telephone Bank,” from the second sentence.

PART 1755—TELECOMMUNICATIONS POLICIES ON SPECIFICATIONS, ACCEPTABLE MATERIALS, AND STANDARD CONTRACT FORMS

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

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq., 7 U.S.C. 6941 et seq.

18. Amend § 1755.30 by revising paragraphs (c)(25) through (c)(45), and removing paragraphs (c)(46) through paragraphs (c)(56) to read as follows:

§ 1755.30 List of telecommunications standard contract forms.

* * * * *

(c) * * *

(25) RUS Form 395, [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**], Equipment Contract.

(26) RUS Form 395a, [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**], Equipment Contract Certificate of Completion (Including Installation).

(27) RUS Form 395b, [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**], Equipment Contract Certificate of Completion (Not Including Installation).

(28) RUS Form 395c, [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**], Certificate of Contractor and Indemnity Agreement.

(29) RUS Form 395d, [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**], Results of Acceptance Tests.

(30) RUS Form 506, issued 3–97, Statement of Engineering Fee—Telecommunications.

(31) RUS Form 515, issued September 17, 2001, Telecommunications Systems Construction Contract (Labor and Materials).

(32) RUS Form 526, issued 8–66, Construction Contract Amendment.

(33) RUS Form 527, issued 3–71, Statement of Construction, Telephone System “Outside Plant”.

(34) RUS Form 553, issued 5–67, Check List for Review of Plans and Specifications.

(35) RUS Form 724, issued 10–63, Final Inventory, Telephone Construction Contract.

(36) RUS Form 724a, issued 4–61, Final Inventory, Telephone Construction—Telephone Construction Contract (Labor and Materials), columns 1–8.

(37) RUS Form 724b, issued 3–61, Final Inventory, Telephone Construction Contract (Labor and Materials), columns 9–14.

(38) RUS Form 771, issued 10–75, Summary of Work Orders (Inspected by RUS Field Engineer).

(39) RUS Form 771a, issued 10–75, Summary of Work Orders (Inspected by Licensed Engineer or Borrower's Staff Engineer).

(40) RUS Form 773, issued 12–90, Miscellaneous Construction Work and Maintenance Services Contract.

(41) RUS Form 787, issued 8–63, Supplement A to Construction Contract.

(42) RUS Form 817, issued 6–60, Final Inventory, Telephone Force Account Construction.

(43) RUS Form 817a, issued 6–60, Final Inventory, Telephone Force Account Construction, columns 1–8.

(44) RUS Form 817b, issued 6–60, Final Inventory, Telephone Force Account Construction, Columns 9–14.

(45) RUS Form 835, issued 3–66, Preloan Engineering Service Contract, Telephone System Design.

Dated: October 5, 2016.

Brandon McBride

Administrator

Rural Utilities Service

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