

## Rural Utilities Service, USDA

## § 1789.151

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AUTHORITY: 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

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### Subpart A—Policy and Procedures With Respect to Consultant Services Funded by Borrowers—General

#### § 1789.150 Purpose.

This part sets forth policies and the procedures for implementing subsection (c) of section 18 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*)(RE Act) which authorizes the Rural Utilities Service (RUS) to use the services of Consultants funded by the Borrowers to facilitate timely action on Applications by Borrowers for financial assistance and other approvals.

#### § 1789.151 Definitions.

As used in this part:

*Administrator* means the Administrator of the Rural Utilities Service (RUS).

*Application* means a request for financial assistance under the RE Act or such other approvals as may be required of the RUS pursuant to the terms of outstanding loan or security instruments or otherwise.

*Borrower* means any organization which has an outstanding loan(s) made or guaranteed by RUS or its predecessor agency, the Rural Electrification Administration (REA) under the RE Act or any organization which has submitted or submits an Application before RUS.

*Consultant* means a person or firm which has been retained pursuant to this subpart under a contract to provide financial, legal, engineering, environmental, or other technical advice and services.

*Consultant Contract* means a contract for the performance of consulting services for RUS, to be paid using funds provided by a Borrower, which may be in the form of a Retainer Contract, purchase order, or other form as may be appropriate.

*Escrow Account* means an account established pursuant to § 1789.158.

*Escrow Agreement* means an agreement, between a Borrower, a Consultant and a Third-party Commercial Institution, meeting the requirements of § 1789.167.

*Final Invoice* means the closing Invoice prepared for a given Task Order.

*Financial Consultant* means a Consultant retained pursuant to this part to provide financial advisory services.

*Funding Agreement* means an agreement, between a Borrower and a Consultant, providing for the Borrower to fund the costs of a Task Order and otherwise meeting the requirements of § 1789.166.

*Indemnification Agreement* means an agreement by a Borrower meeting the requirements of § 1789.162.

*Invoice* means an invoice prepared by a Consultant pursuant to the terms of a Consultant Contract.

*Legal Consultant* means any Consultant retained pursuant to this part to provide legal services to RUS.

*Notice of Proposal to Fund* means a notice meeting the requirements of § 1789.156 provided to RUS by the Borrower.

*Organizational conflict of interest* means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

*Retainer Contract* means a Consultant Contract providing for a minimum required payment to a Consultant irrespective of whether services are utilized by RUS thereunder.

*Task Order* means a written request for consultant services pursuant to the terms of a Consultant Contract.

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*Third-party Commercial Institution* means a commercial financial institution mutually acceptable to the Borrower and the Consultant.

### § 1789.152 Policy.

(a) As provided in this subpart, RUS may, at its discretion, use the services of Consultants funded by a Borrower where such services will facilitate timely action on an Application by such Borrower for financial assistance or other approvals. Such Consultants may provide financial, legal, engineering, environmental or other technical advice and services in connection with the review of an Application.

(b) With the approval of RUS, a Borrower may fund the cost of consulting services in connection with the review by RUS of an Application by such Borrower. Such funding shall be provided pursuant to the terms of a Funding Agreement between the Borrower and the Consultant designated by RUS.

(c) RUS may not, without the consent of the Borrower, require, as a condition of processing any Application for approval, that the Borrower agree to pay the costs of a Consultant hired to provide services to RUS.

(d) The government shall retain sole discretion in the selection of Consultants to provide services to RUS and the form of contract utilized. RUS may either use the services of one or more Consultants retained under Retainer Contracts or the government may elect to retain a Consultant not otherwise on retainer. The government shall have sole discretion to prescribe terms and conditions of Consultant Contracts. The Borrower may bring considerations to the attention of the government which the Borrower deems pertinent to the selection process.

(e) RUS shall retain sole discretion as to whether to further pursue use of an outside consultant for the relevant application in the event the Borrower does not enter into the agreements referenced in §1789.158(c)(3)(iii) within 60 days of the government providing to the Borrower the information set forth in §1789.158(c)(3).

### § 1789.153 Borrower funding.

Borrowers shall use their general funds for the purposes of funding con-

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sultant services hereunder. Borrowers may not use the proceeds of loans made or guaranteed under the RE Act for costs incurred by Borrowers pursuant to the funding of consultant services for RUS.

### § 1789.154 Eligible borrowers.

All Borrowers are eligible to fund consultant services under this part.

### § 1789.155 Approval criteria.

RUS will consider approving the use of consultant services funded by a Borrower on a case by case basis taking into account, among other matters, the following:

(a) Whether such services are required to facilitate timely action on a Borrower's Application. RUS shall determine what represents timely action with respect to each Application considering, among other matters, the review period normally required for such projects by RUS and other lenders and the consequences to the Borrower of adjusting the review period.

(b) The availability of staff resources, the priorities of other projects then before RUS, and the efficiencies to be realized from the use of consultant services.

(c) Whether it is in the best interest of RUS to use Borrower-funded Consultants. Certain types of projects, such as those involving issues of program-wide significance, may not be well suited for the use of Borrower funded Consultants.

### § 1789.156 Proposal procedure.

(a) In the event RUS determines that consideration should be given to the use of a Borrower-funded consultant in connection with the review of an Application, the RUS Regional Director or the Director of the Power Supply Division, as appropriate, will discuss with the Borrower the nature of the Application and the projected review period required of RUS. If RUS concludes that the projected review period will not result in timely action on the Application, and after being so notified in writing by RUS the Borrower wishes to fund consultant services to facilitate RUS review, the Borrower shall submit