

RD AN No 4479 (1942-A)  
November 20, 2009

TO: Rural Development State Directors

ATTN: Community Facilities Program Directors  
Rural Development Area and Local Offices  
State Architects, Engineers, Construction Analysts and  
Inspectors

FROM: Tammye Treviño (*Signed by Tammye Treviño*)  
Administrator  
Housing and Community Facilities Programs

SUBJECT: Agents are Unacceptable Bidders

**PURPOSE/INTENDED OUTCOME:**

The purpose of this Administrative Notice (AN) is to assist the Rural Development (RD) staff in the identification of unacceptable bidders for Community Facilities projects.

This AN supplements and clarifies the requirements in RD Instruction 1942-A, (7 C.F.R. §1942.18 (j) (1) Owner's procurement regulations: Code of conduct, and 7 C.F.R. §1942.18 (j) (7) (iii) Unacceptable bidders.

**COMPARISON WITH PREVIOUS AN:**

There is no preceding AN on this subject.

**BACKGROUND:**

RD Instruction 1942-A, and specifically 7 C.F.R. §1942.18(j)(1) and 7 C.F.R. §1942.18(j)(7), both refer to "agents" for the Owner. In these paragraphs, the term "agent" refers to any person or entity that represents the

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November 30, 2009

FILING INSTRUCTIONS:  
Preceding RD Instruction 1942-A

owner in the development and construction of projects, assisting the Owner in making decisions related to project financing and strategies for design and/or construction contracting. Individuals or entities in this position are commonly referred to as Owner's Representative, Project Coordinator, Project Manager, Construction Manager, or Construction Advisor. Furthermore, individuals or entities or any other individual performing similar services under a different term would fall into this group as well.

7 C.F.R. §1942.18(j) (1) states that a conflict of interest would arise if an agent of the owner has "a financial interest in the firm selected for the award."

Individuals/entities that have a financial interest in the firm selected for the award, are not eligible to bid on any aspect of the construction of the project. Therefore, if they attempt to bid on the construction, they need to be disqualified as unacceptable bidders. This includes bidding on any type of construction contract, including all Design/Build or Construction Management types of contracts, even where they are a third party Design/Builder as in American Institute of Architects (AIA) contracts A141-2004, Standard form of Agreement between Owner and Design-Builder (and past or future versions) or a Construction Manager as in B801/CMA-1992 Standard Form of Agreement Between Owner/Construction Manager, Not as Constructor (and past or future versions) in the construction project. This is a conflict of interest; and, the individuals/entities described above would be considered unacceptable bidders on any construction contract.

#### **IMPLEMENTATION RESPONSIBILITIES:**

In the course of reviewing applications, field and state offices will consider these requirements in the evaluation of acceptable bidders. These parties would be considered unacceptable bidders, and cannot be a party to any part of the construction contract.

Please direct all questions pertaining to this AN to Meghan Walsh, Architect, at (202) 205-9590, email: [meghan.walsh@wdc.usda.gov](mailto:meghan.walsh@wdc.usda.gov) of the Rural Housing Service Program Support Staff.