

Sec. 9007 – Rural Energy for America Program (REAP) Construction Planning and Performing Development

§ **4280.115** – The requirements of this section apply for planning, designing, bidding, contracting, and constructing renewable energy systems and energy efficiency improvement projects as applicable. For contracts of \$200,000 or less, the simple contract method may be used, as described below in column (e). Contracts greater than \$200,000 shall use the contract method described below in column (g).

(a) Technical services – Applicants are responsible for providing engineering, architectural, and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services must be provided by the applicant’s “in house” engineer or architect or through contract, subject to Agency concurrence. Engineers and architects must be licensed in the state of where the facility is to be constructed.

(b) Design policies – Facilities will meet the requirements of 1780.57 (b), (c), (d), and (o). **(See attached)** Final plans and specs must be reviewed and concurred with by the Agency prior to start of construction.

(c) Owner’s Accomplishing Work – In some instances, owners may wish to perform a part of the work themselves. For an owner to perform project development work, the owner must meet the experience requirements of 1780.67. **(See attached)** For an owner to provide a portion of the work, with the remainder to be completed by a contractor, a clear understanding of the division of work must be established and delineated in the contract. In such cases, the contractor will be required to inspect the owners work and accept it. *Owners are not eligible for payment for their own work* as it is not an eligible project cost.

	(e) Simple Contract Method	(f) Design Build Contracts	(g) Contract Method
		The same person or entity provides design and engineering work as well as construction and/or installation.	
Size of Contract	< \$200,000	> \$200,000 Follow (e) Simple Contract Method	> \$200,000 and is not design/build method <i>(1780-C Regulations needed)</i>
	Design build method may be used under this method. Typically used for small projects with a contract not greater than \$200,000. All construction work will be performed under a written contract.	<u>Agency prior concurrence</u> must be obtained and the following requirements apply. <i>(1780-C regulations needed)</i> See concurrence requirements below.	
Reimbursement	Typically a lump sum payment upon completion of work. Partial payments can be made in accordance with the Grant Agreement (4280-2) and the construction contract (1924-6), or other Agency approved contract.	Typically a lump sum payment upon completion of work. Partial payments can be made in accordance with the Grant Agreement (4280-2) and the construction Agency approved contract.	Partial payments can be made in accordance with the Grant Agreement (4280-2) and the construction Agency approved contract.
Concurrence requirements	The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.	If the contract is greater than \$200,000 – the applicant will request Agency concurrence for a design-build project by providing the Agency with the following information (i) through (viii): (i) The owner’s written request to use the design/build method with a description of the proposed method. (ii) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include a non-technical <i>(see more on the next page)</i>	The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

	(e) Simple Contract Method	(f) Design Build Contracts The same person or entity provides design and engineering work as well as construction and/or installation.	(g) Contract Method
Concurrence requirements (cont'd)		<p>(ii cont'd) statement summarizing the work to be performed by the contractor and the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.</p> <p>(iii) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for any extra cost which may result from errors or omissions in the services provided under the contract as well as compliance with all Federal, State, and local requirements effective on the contract execution date.</p> <p>(iv) Where noncompetitive negotiation is proposed, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.</p> <p>(v) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.</p> <p>(vi) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.</p> <p>(vii) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by the Agency prior to the start of construction.</p> <p>(viii) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.</p> <p>Agency concurrence of design-build method. The Agency shall review the material submitted by the applicant. When all items are acceptable, the loan approval official will concur in the use of the design/build method. The agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.</p>	

	(e) Simple Contract Method	(f) Design Build Contracts The same person or entity provides design and engineering work as well as construction and/or installation.	(g) Contract Method
Contracting Requirements Threshold	For contracts > \$100,000, certain federal requirements, including surety, must be met. An attachment to the contract may be used to incorporate language for these requirements.		Procurement method shall comply with the requirements of 1780.72, 1780.75, and 1780.76
Forms Used	1924-6 “Construction Contract” or other Agency approved contract must be used.	AIA form A191 “Standard Form of Agreement between Owner and Design/Builder” should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work.	AIA form A101 “Standard Form of Agreement between Owner and Contractor” or EJCDC form C-521 “Suggested Form of Agreement between Owner and Contractor (Stipulated Price) Funding Agency Edition” should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work.
Contract provisions	(i)The contract sum,	The contract sum,	The contract sum,
	(ii)The dates for starting and completing the work,	The dates for starting and completing the work,	The dates for starting and completing the work,
	(iii) Amount of liquidated damages to be charged,	Amount of liquidated damages to be charged,	Amount of liquidated damages to be charged,
	(iv) The amount, method, and frequency of payment,	The amount, method, and frequency of payment,	The amount, method, and frequency of payment,
	<i>(v) Whether or not surety bonds will be required. If not, a latent defects bond may be required.</i>	<i>Surety must meet requirements of 1780.75 (c).</i>	<i>Surety must meet requirements of 1780.75 (c).</i>
	(vi) The requirement that changes or additions must have prior written approval of the Agency,	The requirement that changes or additions must have prior written approval of the Agency,	The requirement that changes or additions must have prior written approval of the Agency,
	(vii) Warranty period to be provided as per Appendices A and B, sections 1 through 10, paragraph (i)(1).	Warranty period to be provided as per Appendices A and B, sections 1 through 10, paragraph (i)(1),	Warranty period to be provided as per Appendices A and B, sections 1 through 10, paragraph (i)(1),
		<i>Contract review and concurrence per 1780.61(b),</i>	<i>Contract review and concurrence per 1780.61(b),</i>
		<i>Owner’s contractual responsibility as per 1780.68,</i>	<i>Owner’s contractual responsibility as per 1780.68,</i>
	<i>Further contract provisions as per 1780.75.</i>	<i>Further contract provisions as per 1780.75.</i>	

	(e) Simple Contract Method	(f) Design Build Contracts	(g) Contract Method
Surety	<p><i>Surety must meet requirements of 1780.75 (c).</i></p> <p>--Surety will be required and made part of the contract if the applicant requests it, or if the contractor requests partial payments for construction work.</p> <p>--If the contractor will receive a lump sum payment at the end of work, the Agency will not require surety.</p> <p>--In cases where no surety is provided and the project involves pre-commercial technology, first of its type in the U.S., or new designs without sufficient operating hours to prove its merit, the loan officer may require a latent defects bond to cover the work.</p>	<p>The same person or entity provides design and engineering work as well as construction and/or installation.</p> <p><i>Surety must meet requirements of 1780.75 (c). Per Form 4280-2 Grant Agreement –</i></p> <p>Grantee will, for construction contracts in excess of \$100,000, provide performance and payment bonds for 100 percent of the contract price.</p>	<p><i>Surety must meet requirements of 1780.75 (c). Per Form 4280-2 Grant Agreement –</i></p> <p>Grantee will, for construction contracts in excess of \$100,000, provide performance and payment bonds for 100 percent of the contract price.</p>
Equal Opportunity	<p>Required language involving contracts or subcontracts > \$10,000. The required language is in the 1924-6 contract. If this form is not used, such language must be made a part of the contract.</p>	<p>Required language involving contracts or subcontracts > \$10,000.</p>	<p>Required language involving contracts or subcontracts > \$10,000.</p>
Obtaining bids and selecting a contractor	<p>i) The <u>applicant may select a contractor and negotiate a contract</u> or contact several contractors and request each to submit a bid. The applicant will provide a statement to the Agency describing the process for obtaining the bid(s) and what alternatives were considered.</p> <p>(ii) When a <u>price has already been negotiated</u> by an applicant and a contractor, the Agency will review the proposed contract. If the contractor is qualified to perform the development and provides a warranty of the work and the price compares favorably with the cost of similar construction in the area, further negotiation is unnecessary. If the Agency determines the price is too high or otherwise unreasonable, the applicant will be required to negotiate further with the contractor. If a reasonable price cannot be negotiated or if the contractor is not qualified, the applicant will be required to negotiate with another contractor.</p> <p><i>(See more on the next page)</i></p>	<p><i>The applicant may select a contractor based on competitive sealed bids, competitive negotiation or noncompetitive negotiation as described in 1780.72 (b), (c), or (d).</i></p>	<p><i>The applicant may select a contractor based on competitive sealed bids, competitive negotiation or noncompetitive negotiation as described in 1780.72 (b), (c), or (d).</i></p>

	(e) Simple Contract Method	(f) Design Build Contracts The same person or entity provides design and engineering work as well as construction and/or installation.	(g) Contract Method
Obtaining bids and selecting a contractor (cont'd)	<p>(iii) When an applicant has proposed development with <u>no contractor in mind</u>, <u>competition will be required</u>. The applicant must obtain bids from as many qualified contractors, dealers or trades people as feasible depending on the method and type of construction.</p> <p>(iv) If the award of the contract is by competitive bidding, RD form 1924-5 "Invitation for Bid (Construction Contract)," or another similar Agency approved invitation bid form containing the requirements of 1901-E may be used.</p> <p>All contractors from whom bids are requested should be informed of all conditions of the contract including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder. When applicable, copies of form 1924-6 and 400-6 "Compliance Statement" should be provided to prospective bidders.</p>		
Awarding the Contract	<p>The applicant, with the assistance of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation. The applicant will select and notify the lowest responsible bidder.</p> <p>The contract will be awarded using Form 1924-6 or similar Agency approved document.</p>		<p>Applicants awarding contracts must comply with 1780.70 (h).</p> <p>Applicants awarding contracts prior to filing an application must comply with 1780.74.</p>
Final Payments	<p>Prior to making final payment when a surety bond is not used, RD will be provided with RD form 1924-9 "Certificate of Contractor's Release" and RD form 1924-10 "Release of Claimants" executed by all persons who furnished materials or labor in connection with the contract.</p> <p>The applicant should furnish the contractor with a copy of RD form 1924-10 at the beginning of the work in order that the contractor may obtain these releases as the work progresses.</p>		<p>Contract administration must comply with 1780.76.</p> <p>If another Federal or State agency is providing funding and requires oversight of inspections, change orders, and pay requests, the loan official may accept copies of their reports or forms as meeting oversight requirements of Rural Development.</p>

Exceptions for Simplified Application Grant Projects with total eligible project costs of \$200,000 or less.

4280.109 (a) (b)

(3) Project development

- (i) Any grantee may participate in project development without direct compensation subject to the approval in writing by the prime contractor, provided that all applicable construction practices, manufacturer instructions, and all safety codes and standards are followed during construction and testing, and the work product meets all applicable manufacture specifications, and all applicable codes and standards. The prime contractor remains responsible for all the overall successful completion of the project including any work done by the grantee, or
- (ii) A grantee who can demonstrate to the Agency that the grantee has the necessary experience and other resources to successfully complete the project may serve as the prime contractor/installer. Projects where the grantee or borrower serves as the prime contractor will need to secure the services of an independent professionally responsible, qualified consultant to certify testing specifications, procedures, and testing results.

(4) Project completion – The project is complete when the applicant has provided a written final project development, testing, and performance report acceptable to the Agency. Upon notification of receipt of an acceptable project completion report, the applicant may request grant reimbursement. The Agency reserves the right to observe the testing.

7 CFR Subpart C 1780 Energy/environment - Planning, Designing, Bidding, Contracting, Constructing and Inspections (selected sections)

§ 1780.57 Design policies

Facilities financed by the Agency will be designed and constructed in accordance with sound engineering practices, and must meet the requirements of Federal, State and local agencies.

- (b) Architectural barriers. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed must be developed in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) as implemented by 41 CFR 101–19.6, section 504 of the Rehabilitation Act of 1973 (42 U.S.C 1474 *et seq.*) as implemented by 7 CFR parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).
- (c) Energy/environment. Facility design should consider cost effective energy-efficient and environmentally sound products and services.
- (d) Fire protection. Water facilities should have sufficient capacity to provide reasonable fire protection to the extent practicable.
- (o) Seismic safety. All new structures, fully or partially enclosed, used or intended for sheltering persons or property will be designed with appropriate seismic safety provisions in compliance with the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*), and Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR, 1990 Comp., p. 269). Designs of components essential for system operation and substantial rehabilitation of structures that are used for sheltering persons or property should incorporate seismic safety provisions to the extent practicable. RUS implementing regulations for seismic safety are in 7 CFR part 1972, subpart C.

§ 1780.61 Construction contracts

(b) Contract review and concurrence. The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these documents have been properly authorized to do so. The contract documents, engineer's recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they have been concurred in by the Agency. The State program official or designee is responsible for concurring in construction contracts with the legal advice and guidance of the OGC when necessary.

§ 1780.67 Performing construction

Owners are encouraged to accomplish construction through contracts with qualified contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by § 1780.76. Inspection services may be provided by individuals as approved by the State staff engineer. Payments for construction will be handled under § 1780.76(e).

§ 1780.68 Owner's contractual responsibility

This part does not relieve the owner of any responsibilities under its contract. The owner is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, or Federal authority.

§ 1780.70 Owner's procurement regulations

(h) Contract award. Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred by any Agency of the United States Government.

§ 1780.72 Procurement methods

Procurement shall be made by one of the following methods: Small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(a) Small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$100,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be requested from at least three qualified sources.

(b) Competitive sealed bids. In competitive sealed bids (formal advertising), an invitation for sealed bids is publicly advertised and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

(1) The invitation for bids shall be publicly advertised at a sufficient time prior to the date set for opening of bids. The invitation shall comply with the requirements in Sec. 1780.70(d). Bids shall be solicited from an adequate number of qualified sources;

(2) All bids shall be opened publicly at the time and place stated in the invitation for bids;

(3) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest; and

(4) Any or all bids may be rejected by the owner when it is in its best interest.

(c) Competitive negotiation. In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized.

Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the Procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable;

(2) The Request for Proposal shall identify all significant evaluation factors and their relative importance;

(3) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award; and

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner. Unsuccessful offerors should be promptly notified.

(d) Noncompetitive negotiation. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase or competitive sealed bids. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

- (1) The item is available only from a single source; or
- (2) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or
- (3) After solicitation of a number of sources, competition is determined inadequate; or
- (4) No acceptable bids have been received after formal advertising; or
- (5) The procurement is for professional services; or
- (6) The aggregate amount does not exceed \$100,000.

§ 1780.74 Contracts awarded prior to applications

Owners awarding construction or other procurement contracts prior to filing an application, must provide evidence that is satisfactory to the Agency that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(a) *Modifications.* The contract shall be modified to conform with the provisions of this part. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (c) of this section.

(b) *Consultant's certification.* Provide a certification by an engineer, licensed in the State where the facility is constructed, that any construction performed complies fully with the plans and specifications.

(c) *Owner's certification.* Provide a certification by the owner that the contractor has complied with applicable statutory and executive requirements related to Agency financing for construction already performed.

§ 1780.75 Contract provisions

In addition to provisions required for a valid and legally binding contract, any recipient of Agency funds shall include the following contract provisions in all contracts.

(a) *Remedies.* Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should be included in all contracts for construction.

(b) *Termination.* All contracts exceeding \$10,000, shall contain suitable provisions for termination by the owner including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) *Surety.* In all contracts for construction or facility improvements exceeding \$100,000, the owner shall require bonds or cash deposit in escrow assuring performance and payment each in the amount of 100 percent of the contract cost. The surety will be in the form of performance bonds and payment bonds. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form RD 1924–10, “Release by Claimants,” and Form RD 1924–9, “Certificate of Contractor’s Release,” may be used for this purpose. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and the surety must be listed as having a license to do business in the State where the facility is located.

(d) *Equal employment opportunity.* All contracts awarded in excess of \$10,000 by owners shall contain a provision requiring compliance with Executive Order 11246 (3 CFR, 1966 Comp., p.339), entitled, “Equal Employment Opportunity,” as amended by Executive Order 11375 (3 CFR, 1968 Comp., p. 321), and as supplemented by Department of Labor regulations 41 CFR chapter 60.

(e) *Anti-kickback.* All contracts for construction shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report suspected or reported violations to the Agency.

(f) *Records.* All negotiated contracts (except those of \$10,000 or less) awarded by owners shall include a provision to the effect that the owner, the Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the

contractor which are directly pertinent to a specific Federal loan or grant program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for 3 years after making final payment and all other pending matters are closed.

(g) *State energy conservation plan.* Contracts shall incorporate mandatory Rural Utilities Service, USDA § 1780.76 standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C.6201).

(h) *Change orders.* The construction contract shall require that all contract change orders be concurred in by the Agency.

(i) *Agency concurrence.* All contracts must contain a provision that they shall not be effective unless and until the State program official or designee concurs in writing.

(j) *Retainage.* All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 5 percent of an approved partial payment estimate until the project is substantially complete and accepted by the owner, consulting engineer and Agency. The contract must provide that additional amounts may be retained if the job is not proceeding satisfactorily.

(k) *Other compliance requirements.* Contracts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 (3 CFR, 1974 Comp., p.209), and Environmental Protection Agency (EPA) regulations 40 CFR part 15, which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the Agency and to the U.S.

Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 4 CFR 15.4(c).

§ 1780.76 Contract Administration

Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(a) *Preconstruction conference.* Prior to beginning construction, the owner will schedule a preconstruction conference where the consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, and other interested parties. The conference will thoroughly cover applicable items included in Form RD 1924-16, "Record of Pre-construction Conference," and the discussions and agreements will be documented.

(b) *Monitoring reports.* The owner is required to monitor construction and provide a report to the Agency giving a full explanation under the following circumstances:

(1) Reasons why approved construction schedules were not met;

(2) Analysis and explanation of cost overruns and how payment is to be made for the same; and

(3) If events occur which have a significant impact upon the project.

(c) *Inspection.* Full-time resident inspection is required for all construction unless a written exception is made by the Agency upon written request of the owner.

Unless otherwise agreed, the resident inspector will be provided by the consulting engineer. Prior to the preconstruction conference, the consulting engineer will submit a resume of qualifications of the resident inspector to the owner and to the Agency for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project engineer for comments and the Agency for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the technical supervision of the project engineer and the role and responsibilities will be defined in writing.

(d) *Inspector's daily diary.* The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports. The daily entries shall be made available to the Agency personnel and will be reviewed during project inspections. The original complete set will be furnished to the owner upon completion of construction. RUS Bulletin 1780-18 is available from the Agency for preparing daily inspection reports or the reports can be provided in other formats approved by the State staff engineer.

(e) *Payment for Construction.* Form RD 1924-18, "Partial Payment Estimate," or other similar form may be used for construction payments. If Form 1924-18 is not used, prior concurrence by the State staff engineer must be obtained.

(1) Payment of contract retainage will not be made until such retainage is due and payable under the terms of the contract.

(2) Invoices for the payment of construction costs must be approved by the owner, project engineer and concurred in by the Agency.

(3) The review and acceptance of project costs, including construction payment estimates by the Agency shall not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(f) Prefinal inspections. A prefinal inspection will be made by the owner, resident inspector, project engineer, contractor, representatives of other agencies involved, and Agency representative (preferably the State staff engineer or designee). The inspection results will be recorded by the project engineer and a copy provided to all interested parties.

(g) Final inspection. A final inspection will be made by the Agency before final payment is made.

(h) Changes in development plans.

(1) Changes in development plans shall be reviewed and approved by the Agency provided:

(i) Funds are available to cover any additional costs; and

(ii) The change is for an authorized loan or grant purpose; and

(iii) It will not adversely affect the soundness of the facility operation or the Agency's security; and

(iv) The change is within the scope of the contract,

(2) Changes will be recorded on Form RD 1924-7, "Contract Change Order," or other similar form if approved by the State program official or designee.

Regardless of the form, change orders must be approved by the State program official or designee.

(3) Changes should be accomplished only after Agency approval and shall be authorized only by means of contract change order. The change order will include items such as:

(i) Any changes in labor and material;

(ii) Changes in facility design;

(iii) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule; and

(iv) Any increase or decrease in the time to complete the project.

(4) All changes shall be recorded on chronologically numbered Contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.