

## **REQUIREMENTS OF THIS COLLECTION—NON-FORMS** (IN ORDER OF APPEARANCE IN REGULATION)

### **Application/Eligibility Items**

#### **Documentation of Income Survey**

Income data used must accurately reflect the service area. If an adequate representation cannot be obtained through the American Community Survey the applicant may receive authorization from RUS to obtain an Income Survey, which is completed by an experienced and independent third-party. Dependent on the number of users, metrics are established to determine how many responses are needed for the survey to be accepted.

#### **Relationship or Association with Employees**

Applicants must identify and report any known relationship or association with a RUS or RD employee such as close personal association, immediate family, close relatives, or business associates.

#### **Statement on availability to obtain credit elsewhere**

Applicants must certify in writing that they are unable to finance the proposed project from their own resources or through commercial sources at reasonable rates and terms. The CONACT, as amended, requires the credit elsewhere analysis and statement. Form RUS Bulletin 1780-22, Eligibility Certification, may be used by borrowers.

#### **Notification of Service Statement**

If it is not economically feasible to serve all users in an applicant's service area, then the applicant is required to notify those users who will not be served.

#### **Security- Public Bodies- General Obligation and Revenue Bonds**

Loans to public bodies are securitized through the issuance of General Obligation and/or Revenue Bonds due to the inability of the public body to encumber a facility. The issuance procedures are further outlined in later sections of the instruction.

#### **Security- Not-for-Profit- Liens on Property and Financing Statement**

A lien on real and chattel property with an assignment of income will be taken on essential not-for-profit organizations. A lien is a method of encumbering the property of a borrower and is necessary to protect the interest of the Government.

#### **Evidence of Public Notice**

Applicants must publish a notice of intent to file an application with RUS in a general circulation newspaper. Applicants also must conduct a public information meeting to allow public input into the proposed project when an election by the membership or public referendum is not required. They must provide RUS a copy of the published notice and minutes of the public meeting, which serve as documentation of the meeting.

#### **Intergovernmental Comments**

Applicants must submit a copy of written comments from their State or regional clearinghouse stating whether the proposed project will be consistent with and whether or not the project conflicts with plans, goals, or objectives of the State or region in which the proposed project will be located.

#### Preliminary Engineering Report

Applicants must submit a preliminary engineering report (“PER”) prepared by a qualified engineer. The PER indicates areas to be served, scope and need of the project, cost estimate, annual operating expenses, etc. RUS Bulletin 1780-2, Preliminary Engineering Report, lists the topics and provides the organizational structure for the report. The information in the PER is necessary for RUS to determine project feasibility.

#### Supporting Documentation

Applicants are required to submit supporting documentation needed for RUS staff to complete their review, which is not collected through forms or other methods. This may vary due a number of factors, such as the state, applicant entity type, and financed facility. Generally, applicants must provide documentation of legal organization and authority to borrow funds, construct, operate, manage the facility, etc. The documentation may include articles of incorporation, certificate of incorporation and good standing, bylaws, rules, and organizational minutes. Applicants also must provide financial information such as financial statements, audits, or existing debt instruments. This information is necessary for RUS to determine an organization’s legal existence, authority to perform certain functions, and financial capacity to borrow funds.

#### Environmental Report

All projects financed are subject to the National Environmental Protection Act, among other laws. To document compliance, applicants must submit an environmental report (“ER”) prepared by a qualified party. The ER reviews the statutes in relation to the proposed scope of work and provides a list of mitigation factors, if needed. RD Instruction 1970, Environmental, and its sub-parts, outline the steps to complete the ER. The report is reviewed and approved by RUS Environmental Coordinators.

#### Form RD 1940-Q, “Certifications for Contracts, Grants, and Loans (Regarding Lobbying)”

All applicants must certify in writing that they have not committed any lobbying with a Member of Congress related to any federally awarded contracts, grants, and/or loans. The form is executed by the applicant’s authorized representative. If any lobbying has occurred, additional disclosures may be required.

#### Certification on Tying Arrangements

All applicants must complete a certification prohibiting tying arrangements. This is of particular relevance to applicants that provide electric service as they cannot require users of a water or waste facility financed under this part to accept electric service as a condition of receiving assistance.

#### Agreements for Professional Services

Applicants must contract for the professional services rendered from an engineer, attorney, bond counsel, accountant, auditor, appraiser, or financial advisor. Contracts or other forms of agreement for services necessary for project planning and development are subject to RUS concurrence. Some forms are available, dependent upon the services, such as RUS Bulletin 1780-7, Legal Services Agreement, and RUS Bulletin 1780-8, Minimum Suggested Contents of Management Agreements. Applicants must submit contracts or forms of agreement for review and concurrence to ensure the needed services are available at a reasonable cost.

#### Contracts for Other Services

Contracts or other forms of agreement for services such as management, operation, and maintenance must be presented to RUS for review and concurrence. Although these functions are performed by a third party under contract, management, or written lease, applicants are responsible for operating, maintaining, and managing the facilities.

#### Positive Programs to Encourage Connections

Applicants must provide a positive program to encourage connection by all users as soon as service is available. They must provide evidence to RUS that a positive program has been provided.

#### User Agreement

All new users on a proposed system must enter into an enforceable user agreement with an applicant or borrower unless local laws or ordinances mandate connections to the system. This requirement is necessary to assure that the proposed number of users will be connecting to the system and paying for the service. RUS must approve the form of agreement. RUS Bulletin 1780-9, User Agreement, may be used.

#### Interim Financing

For all loans exceeding \$500,000, interim financing may be obtained from commercial sources for the construction period. When applicants can borrow funds at reasonable rates, interim financing may be used so that multiple advances of RUS funds will be unnecessary. RUS provides guidance concerning informing the interim lender of the agency's commitment. Applications, including construction bids, will be processed to the stage where the loan would be closed, immediately before construction begins. Before the loan is closed, applicants must provide statements from the contractor, engineer, architect, and attorney that they have been paid to date under their contracts. This process protects the Government from mechanic's liens and ensures that funds are used for authorized purposes.

#### Insurance

As outlined in RUS Instruction 1780.39(g), applicants are required to obtain and maintain certain insurance coverages. This may vary to some degree by applicant. For instance,

only those with facilities in a floodplain are required to have flood insurance. The types insurances needed are referenced below:

- Fidelity or Employee Dishonesty Bond,
- Property Insurance
- General Liability Insurance
- Flood Insurance
- Workman's Compensation Insurance

These forms of insurance are normal in any organization. RUS requires them to be available at the time of loan closing or start of construction, whichever occurs first. RUS will accept the insurance requirements proposed by applicants if RUS determines that the proposed coverage is adequate to protect the Government's financial interest.

### ***Approval/Actions Following Obligation***

#### Letter of Conditions

The Letter of Conditions is a narrative document that outlines all of the terms and conditions of the proposed award, which vary by project. The document is initially prepared by RUS/RD staff, however, each section is reviewed and concurred with the applicant's authorized representative. RUS Bulletin 1780-19, Water and Waste Letter of Conditions, provides the initial template.

#### Evidence of Other Funds

When applicants expect to use funds from other sources to complete projects being financed partially with RUS funds, they will present evidence of the other sources' funding commitment. This evidence ensures that necessary funds are available to complete the project.

#### Appraisal Report

Applicants are responsible for determining that prices paid to acquire all property rights necessary for a project are fair and reasonable. RUS/RD may require an independent appraisal in some instances to determine the present market value of the property.

#### User Connections

When RUS funds the costs of connecting a user to the system, applicants will obtain adequate rights to construct and maintain the connection line or other facilities located on the user's property. The right may be obtained through formal easements or user agreements. This requirement assures that the facilities financed with RUS funds provide the intended service.

#### Water Rights

When applicable, applicants must furnish these documents for RUS/RD to review: (1) a statement from their attorneys about the nature of the water rights owned or to be acquired, and (2) a copy of any contracts or stock certificates.

### Lease Agreements

Applicants must provide written agreements or contracts with property owners when applicants do not own the right to use or control real property, but the right is essential to the successful operation of the facility during the life of the RUS loan. This written agreement is needed to protect the interest of the Government during the life of the loan and to assure that the facility can provide the intended service.

### RUS Bulletin 1780-27, “Loan Resolution (Public Bodies)”

The loan resolution is the agreement for financial assistance between RUS/RD and public bodies. It sets forth the specific terms and covenants to be complied with as long as the loan is outstanding.

### RUS Bulletin 1780-28, “Loan Resolution Security Agreement”

The loan resolution security agreement is the legally binding document for financial assistance between RUS/RD and non-public organizations. It sets forth the specific terms and covenants to be complied with as long as the loan is outstanding.

### RUS Bulletin 1780-12, “Grant Agreement”

The Grant Agreement sets forth the terms and conditions under which the applicant receives a grant. Applicants and the agency must execute the document before grant funds are disbursed.

### Audits Based on Federal Assistance, and Borrowers Exempt on Audits

An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures. All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of your fiscal year end.

All borrowers who are exempt from audits must provide RUS/RD with annual financial statements. This consists of a verification of the organization's balance sheet and statement of income and expense by an appropriate official of the organization. Forms RD 442-2, “Statement of Budget, Income and Equity,” and 442-3 may be used. The financials must be submitted within 60 days of the organization’s fiscal year-end.

### Management Reports

All borrowers must submit management reports that evaluate prior decisions and serve as a basis for planning future operations and financial strategies. There are two types of Management Reports: (1) annual, and (2) quarterly. Annual reports are due from each borrower; however, quarterly reports are due from first year borrowers and those who are experiencing financial difficulties. The quarterly reports may be waived by RUS/RD

staff if the account is current for a full year of operation. This requirement is necessary to help assure that the facility will be properly managed and to protect the Government's financial interest.

### ***Actions during Construction***

#### Construction Contract Forms

Contracts for construction to be paid for with RUS funds must be submitted to RUS/RD for review and concurrence. The contracts must be adequate to protect the interests of both the borrower and the Federal government. Several RUS Bulletins provide guidance on the required contents and how to complete the forms, including RUS Bulletin 1780-14, Supplemental General Conditions, and RUS Bulletin 1780-15, Construction Contract Documents.

#### Borrower Attorney's Certification of Construction Contract

The borrower's attorney gives legal certification regarding the adequacy of contract documents. The attorney reviews executed contract documents, including performance and payment bonds, and certifies that they are adequate and properly authorized. This certification assures that the proper legal matters required of the borrower have been satisfied before the loan closing proceeds.

#### Owner's Solicitation and Review of Offers

Proposed procurement actions must be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. This includes an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. There are multiple procurement methods that may be considered. RUS Bulletin 1780-34, Guidance for Using the Competitive Sealed Bid Process, provides guidance on the self-titled procurement method. Additional guidance is available for the other methods that may be considered.

#### Contracts Awarded Prior to Application

When applicants award construction contracts before their application is submitted to RUS/RD, they must also provide documentation to ensure that the contract is awarded in accordance with procurement regulations. The documentation is necessary to ensure the applicant has not circumvented the regulations and is in compliance.

#### Pre-Construction 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 cover applicable items included in Form RD 1924-16, "Record of Pre-construction Conference," and the discussions and agreements will be documented.

#### Monitoring Reports

Owners are responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the contracts. They must provide reports to RUS/RD, explaining significant events that affect the progress of project construction.

#### Resident Inspector Resume

The resident inspector for a construction project must submit a resume demonstrating that the inspector is qualified to perform the duties. The resume is reviewed by RUS/RD staff.

#### Daily Inspection Report

The construction inspector for a construction project must maintain a daily log of progress, problems, and any other items that may affect construction. The reports provide information to serve as a basis for decisions for payment, change orders, or other actions. The agency may require these reports to be submitted on a weekly basis during the duration of the construction, or they will be made available for inspection during agency visits. RUS Bulletin 1780-18, Daily Inspection Report, may be used.

#### Bond Transcript Documents

This item refers to the ancillary documents issued alongside the permanent security instrument. The documents are prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State program official and OGC. The items included may vary by project, but a general list is set forth in this sub-part.

#### Multiple Advances of Agency Funds (Bond Anticipation Note)

When interim financing cannot be obtained from a commercial source and a permanent instrument is not legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of Agency funds and will be for the full amount of the Agency loan. The instrument will be prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State program official and OGC. At the same time the Agency delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower.