According to the paperwork Reduction Act of.1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0107. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

U.S. Department of Agriculture
Rural Utilities Service

Form Approved
OMB No. 0572-0107
Exp. Date: XX/XX/20XX

EQUIPMENT CONTRACT

NOTICE AND INSTRUCTIONS TO BIDDERS

1. **Sealed proposals** *for the furnishing and delivering f. o. b.* _____

_____

of equipment for the rural electric project of _____ ,

RUS designation _____ *, (hereinafter called the "Owner") will be received by the Owner on or before* _____ *o'clock* ____ *M.,* _____ *,20* _____ *, at its office*

at _____ *at which time and place the proposals will be*

☐ *publicly opened and read.*

☐ *privately opened. The Owner, subsequent to the bid opening, may elect to conduct clarifying discussions with the bidder to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price for a responsive bid.*

Any proposals received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. **Obtaining Documents.** *The Plans, Specifications, and Construction Drawings, together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer* _____

_____ *at the latter's office at* _____

upon the payment of $ _____*, which payment will not be subject to refund. The Plans, Specifications, and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer.*

3. **Manner of Submitting Proposals.** *Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be completed in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated. The successful Bidder will be required to execute two additional counterparts of the Proposal.*

4. **Due Diligence.** *Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the Plans, Specifications, Construction Drawings, and form of Proposal, and shall review the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the project, general local conditions, environmental and historic preservation considerations, and all other matters that may affect the cost and time of completion of the work. Bidder will be required to comply with all federal, state, and local laws, rules, and regulations applicable to its performance, including those pertaining to the licensing of contractors, and the Anti Kick-Back Act of 1986 (41 U.S. C. 51 et seq).*

5. **Proposals** *will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.*

6. **The Time for Delivery of the Equipment** *is of the essence of the Contract and shall be as specified by the Engineer in the Proposal.*

7. **Evaluation Factors.** *In estimating the lowest cost to the Owner as one of the factors in deciding the award of the Contract, the Owner will consider, in addition to the price quoted in the Proposals, the following:*

_____

_____

_____

8. **Debarment Certification.** *The Bidder must provide to the Owner a suspension and debarment certificate in the form attached hereto.*

9. **Contract is Entire Agreement.** *The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modifications thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.*

10. **Minor Irregularities.** *The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.*

11. **Bid Rejection.** *The Owner reserves the right to reject any or all Proposals.*

12. **Definition of Terms.** *The terms "Administrator" and "Engineer" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Proposal.*

_____
Owner

*By*_____

_____
Title

_____ *,20* ____
Date

PROPOSAL

TO:

_____

_____*(hereinafter called the "Owner").*

ARTICLE 1--GENERAL

Section 1. Offer to Furnish and Deliver. *The undersigned (hereinafter called the "Bidder") hereby proposes to furnish and deliver the equipment (hereinafter called the "Equipment") described in the Plans, Specifications, and Construction Drawings for the following prices:*

Item: _____ *Price:* _____

Item: _____ *Price:* _____

The prices of Equipment set forth herein shall include the cost of delivery to:

_____

The prices set forth herein do not include any sums which are or may be payable by the Bidder on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment. If any such tax is applicable to the sale, purchase or use of the Equipment hereunder, the amount thereof shall be added to the purchase price and paid by the Owner.

Section 2. Materials and Equipment. *The Bidder agrees to furnish and use in the construction of the project under this Proposal, in the event the Proposal is accepted, only such "fully accepted, " "conditionally accepted, " and "technically accepted" materials and equipment which have been accepted by RUS as indicated in the current RUS Informational Publication 202-1, "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers," including revisions adopted prior to the Bid Opening. The use of "conditionally accepted" or "technically accepted" materials and equipment requires prior consent by the Owner or Engineer.*

The Bidder will purchase all materials and equipment outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall be new.

Section 3. Description of Contract. *The Notice and Instructions to Bidders, Plans, Specifications, and Construction Drawings, which by this reference are incorporated herein, together with the Proposal and Acceptance constitute the Contract. The Plans, Specifications, and Construction Drawings, including maps, special drawings, and approved modifications in standard specifications are attached hereto and identified as follows:*

_____

_____

_____

Section 4. Due Diligence. *The Bidder has made a careful examination of the Plans, Specifications, and Construction Drawings attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the project, and*

has become acquainted with the labor conditions, federal, state, and local laws, rules, and regulations applicable to its performance.

Section 5. Warranty of Good Faith. *The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.*

ARTICLE II--DELIVERY AND WARRANTY

Section 1. Delivery. *The Bidder shall deliver the Equipment:*

☐ *within* _____ *days after receipt of the written order or orders of the Owner.*

☐ *not later than* _____ *,20* _____

The time for delivery shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Bidder, including, but not limited to, acts of God, fires, strikes, and floods.

Section 2. Defective Materials and Workmanship.

a. All Equipment furnished hereunder shall be subject to the inspection, tests, and approval of the Owner and the Engineer, and the Bidder shall furnish all information required concerning the nature or source of any Equipment and provide adequate facilities for testing and inspecting the Equipment at the plant of the Bidder.

b. The Equipment furnished hereunder shall become the property of the Owner upon delivery, provided, however, that the Owner or the Engineer, within one year after initial operation of the Equipment, or within the period for which the Equipment is guaranteed, whichever is longer, may reject any Equipment which does not comply with the Specifications attached hereto and made a part hereof or with the guarantees, if any, of the Bidder and the manufacturer. Upon any such rejection, the Bidder shall repair or replace such defective Equipment within a reasonable time after notice in writing from the Owner. If any such defective materials, equipment, or workmanship so replaced or repaired is found to be defective within one year after the completion of the replacement or repair, the Bidder shall replace or remedy such defective materials, equipment, or workmanship. In the event of failure by the Bidder so to do, the Owner may make such replacement and the cost and expense thereof shall be paid by and recoverable from the Bidder.

c. All manufacturers' guarantees of Equipment, if any, shall be transferred and assigned to the Owner upon delivery of any Equipment and before final payment is made for such Equipment. Such guarantees shall be in addition to those required of the Bidder by other provisions of this Contract.

ARTICLE III-PAYMENT

Section 1. Payments to Bidder.

a. Upon the shipment of any Equipment hereunder, the Bidder shall submit to the Owner a detailed statement of the Equipment shipped. The Owner shall, upon receipt of the Equipment, pay the Bidder ninety percent (90%) of the contract price of the Equipment. When the Equipment has been installed, placed in satisfactory operation, tested and accepted by the Owner, the Owner shall make final payments therefor to the Bidder; provided, however, such final payment

shall be made not later than _____ days after delivery of the Equipment, unless such acceptance by the Owner shall be withheld because of the fault of the Bidder.

b. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

ARTICLE IV--PARTICULAR UNDERTAKINGS OF THE BIDDER

The provisions of this Article IV apply to any work performed by the Bidder at the project site.

Section 1. Protection to Persons and Property. *The Bidder shall at all times take all reasonable precautions for the safety of employees on the project and of the public, and shall comply with all applicable provisions of federal, state, and local laws, rules, and regulations and building and construction codes, in addition to the safety rules and procedures of the Owner.*

The following provisions shall not limit the generality of the above requirements:

a. The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

b. The Bidder shall transport and store all material in facilities and vehicles which are designed to protect the material from damage. The Bidder shall ensure that all vehicles, trailers, and other equipment used comply with all applicable licensing, traffic, and highway requirements.

c. The Bidder shall conduct its operations to cause the least possible obstruction of public highways.

d. The Bidder shall make good and fully repair all injuries and damages to the project or any portion thereof under the control of the Bidder by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

e. Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

Section 2. Insurance. *The Bidder shall takeout and maintain throughout the period of its operations at the project site the following types and minimum amounts of insurance:*

a. Workers' compensation and employers' liability insurance, as required by law, covering all its employees who perform any of the obligations of the Bidder under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million each occurrence, and property damage limits of $1 million for each occurrence. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b " and "c " of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b " and "c " of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

ARTICLE V--REMEDIES

Section 1. Liquidated Damages. *The time of the delivery of the Equipment is of the essence of the Contract. Should the Bidder neglect, refuse or fail to deliver the Equipment within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and*

payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such delivery is delayed beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 2. Cumulative Remedies. *Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section I of this Article shall be the exclusive measure of damages for failure by the Bidder to deliver the Equipment within the time herein agreed upon.*

ARTICLE Vl--MISCELLANEOUS

Section 1. Definitions.

a. The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his or her duly authorized representative or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term "Engineer" shall mean the Engineer employed by the Owner, to provide engineering services for the project and said Engineer's duly authorized assistants and representatives.

Section 2. Materials and Supplies. *In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For the purposes of this section, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and suppliers to the markets of that country, as determined by the Unites States Trade Representative. The Bidder agrees to submit to the Owner such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.*

Section 3. Patent Infringement. *The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering Equipment purchased hereunder.*

Section 4. Compliance with Laws. *The Bidder shall comply with all federal, state, and local laws, rules, and regulations applicable to its performance under the contract and the construction of the project. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the Anti Kick-Back Act of 1986 (41 U.S.C. 51 et seq), and 18 U.S.C. §§ 286, 287, 641, 661, 874, 1001, and 1366, as amended.*

The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985-1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR part 3017.

The Bidder represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

Section 5. Equal Opportunity Provisions.

a. Bidder's Representations.

The Bidder represents that:

It has ☐, does not have ☐, 100 or more employees, and if it has, that it has ☐, has not ☐, furnished the Equal Employment Opportunity-Employers Information Report EEO-1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 of September 24, 1965, and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of

September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6. Successors and Assigns. *Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto. The Owner and Bidder acknowledge that this Contract is assigned to the Government, acting through the Administrator, for security purposes under the Owner's mortgage and security instrument.*

Section 7. Independent Contractor. *The Bidder shall perform the work as an independent contractor, not as a subcontractor, agent, or employee of the Owner. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.*

Section 8. Approval by the Administrator: *This contract does* ☐ *, does not* ☐ *, require approval of the Administrator. No acceptance of a Proposal for a contract upon which approval of the Administrator is required shall become effective until the contract has been approved by the Administrator; provided that no obligation shall arise hereunder unless such approval is given within one-hundred twenty (120) days after the date set for the opening of the proposals. The acceptance of a Proposal for a contract upon which approval of the Administrator is not required shall become effective the date of acceptance by the Owner.*

ATTEST:

_____
Bidder

_____
Secretary

_____
President

*Dated*_____

_____
Address

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

ACCEPTANCE

Subject to the approval of the Administrator, if approval of the Administrator is required, the Owner hereby accepts the foregoing Proposal of the Bidder, _____

_____*for the following Equipment:*

_____

_____

_____

_____

for a total contract price of $ _____ *(*_____*dollars.)*

_____
Owner

By _____
President

_____
Secretary

_____ *,20* _____
Date of Contract