

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 such other form as RUS may choose.

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

*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, satisfactory to RUS, 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. Organizational conflicts of interest shall include, but not be limited to, a financial interest in the project which is the subject of the Application; and providing advice and services concurrently to RUS and to the Borrower which submitted the relevant Application, on the same or different matters. Organizational conflicts of interest may also include activities or relationships determined by the Administrator pursuant to § 1789.161 to constitute an organizational conflict of interest.

*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 made by RUS pursuant to the terms of a Consultant Contract.

*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) RUS shall retain sole discretion in the selection of Consultants to provide services to RUS. RUS may use the services of one or more Consultants retained under Retainer Contracts to provide services for projects to be identified by RUS. Alternatively, RUS may elect to retain a Consultant in connection with a specific project. RUS shall have sole discretion to prescribe terms and conditions of Consultant Contracts. The Borrower shall be advised of the Consultant selected only after committing to fund consultant services.

#### § 1789.153 Borrower funding.

Borrowers shall use their general funds for the purposes of funding consultant 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 to the same Director a funding proposal. The proposal shall set forth the following:

(1) Identification in the heading or caption as a Notice of Proposal to Fund Consulting Services;

(2) Borrower's REA/RUS designation;

(3) Borrower's legal name and address;

(4) A description of the Application, critical issues and concerns relating to the Application, time deadlines, and the consequences of any delays in RUS review;

(5) A description of the consulting service(s) that would facilitate timely RUS review of the Application; and

(6) Such additional documents and information as RUS may request.

(b) RUS will review the Notice of Proposal to Fund and any additional information RUS deems relevant in determining whether to proceed with