#### **Definitions**

Various commenters recommended clarifications and changes to the definitions as well as the addition of several more definitions. RUS has revised several definitions and added two new definitions. The other proposed definitions appear to be self-explanatory without modification.

Several commenters suggested that the contracting committee was not needed or should have a different makeup. RUS believes that this committee, required only under informal competitive bidding and multiparty negotiation, is needed as specified to insure the integrity of these procedures.

# RUS Approvals

Some commenters suggested that RUS approval be automatic after a specified time period (30 or 60 days) without RUS action. Due to numerous factors which may affect RUS approval, including other agency priorities, human resources, and unresolved issues, this change was not made.

Other commenters felt that RUS approval should not be required to purchase used equipment and materials. Since most RUS loans are long-term, RUS must be satisfied that the physical security is adequate, so RUS will continue to require new equipment and materials unless specifically approved by RUS.

Many commenters objected to RUS reserving the right to require contract construction in lieu of force account construction (§ 1726.22). While RUS has rarely exercised this right in the past and does not expect to use it often in the future, there are circumstances where such authority has been and may again be needed, therefore, the language of the rule has not been changed.

Many commenters also objected to certain amendments being subject to RUS approval even if the original contract was not. The purpose of this requirement was to prevent changing the RUS approved form of contract by amendment where the borrower is not permitted to make such changes in the form without RUS approval. The language of the rule has been changed to indicate that the approved form of contract cannot be changed either prior to bidding or by amendment without prior RUS approval, but the actual amendment would not be subject to RUS approval.

Other commenters suggested that a RUS approved form of contract should only be required if RUS approval of the contract is required. RUS disagrees with this. RUS has eliminated many of the requirements for RUS approval of contracts based on the requirement that the borrower use certain forms and procedures for other contracts. This also applies to the amendment forms, although RUS has determined that special requirements for amendments for payment for material delivered are not necessary, so § 1726.26, along with RUS Form 800, have been deleted.

## Documents Submitted to RUS

Many commenters suggested that certain of the documents submitted to RUS are unnecessary. With regard to "Proof of Insurance," RUS agrees and has deleted this requirement. RUS believes that the remaining documents to be submitted are needed to assure that loan funds are being used properly.

#### Procurement Procedures

Several commenters requested clarification of the applicability of some of the procedures and changes to some of the details of the requirements. Several changes have been made in this area. Other commenters suggested that the informal bidding procedure and the multiparty negotiation procedure be changed to allow clarifying discussions or negotiations, respectively, with only the apparent low evaluated bidder. This change has not been made. RUS believes that meeting with at least the three apparent lowest evaluated bidders will insure adequate competition and fairness without undue burden on the borrower.

## **Forms**

A number of commenters suggested that computer generated versions of RUS standard contract forms should be acceptable in addition to the preprinted versions. RUS agrees with this only for those forms which are primarily tables (Forms 251 and 254). For the remainder of the contract forms, RUS continues to believe that the most effective means of maintaining accurate and recognizable forms is to continue to use the preprinted version.

Commenters suggested that RUS Form 792 be modified to allow multi-year contracting and to allow RUS Form 786 to be modified to be a "purchase only" contract form. These changes have been made. One commenter suggested that all contract bonds use RUS Form 168c instead of RUS Form 168b. Form 168c is currently used when the contractor's surety has accepted a Small Business Administration guarantee and the contract is for one million dollars or less. RUS Form 168b has proved to be a satisfactory bond form for other contracts, so RUS has determined that it will require the RUS Form 168b where the Form 168c is not applicable.

A number of other suggestions were made regarding changes to the contract forms. Some minor changes have been made, but RUS intends to thoroughly review and revise these forms in the near future, so other comments will be considered at that time.

Two commenters suggested that RUS prepare a standard form for "Engineer-Procure-Construct" (EPC) or "Turnkey" type projects. RUS's experience with such projects indicate that each one tends to be unique and not well suited to a standard contract form, so therefore, no attempt has been made to develop such a standard form at this time.

## Indemnification

RUS requires borrowers to use standard contract forms for certain construction, material supply, equipment supply, architectural services, and engineering services contracts. The construction contract forms contain a standard indemnification clause (also called "hold harmless") pursuant to which the contractor agrees to indemnify the owner against certain risks. Some borrowers have requested approval to incorporate an alternative indemnification clause in certain contracts. They believe that it provides them indemnification in addition to that afforded by the currently required clause. Some contractors have expressed concern about the extent of their potential liability under such a modified indemnification provision, particularly for certain actions of the owner. RUS has determined that it is in the Government's and the borrowers' best interest to have a reasonable and balanced indemnification provision: one that provides adequate protection for the borrower while not placing an unreasonable business risk on the contractor. An indemnification provision that does not adequately protect the borrower could expose the borrower to liability for damages which could endanger the Government's loan security. An indemnification provision which places an unreasonable business risk on the contractor could result in qualified, capable contractors declining to bid under such conditions, which could result in reduced competition and higher costs. It could even result in the borrower being exposed to increased liability if only financially weak contractors bid, since the contractor may be financially unable to meet its indemnification obligations. In response to these requests, "Permitted Contract Modifications-Indemnification," was published as a proposed rule at 59 FR 4603, February 1, 1994. This final rule incorporates the changes concerning the