Seller
Name
Title

[End of clause]

## §§ 1726.316-1726.319 [Reserved]

## § 1726.320 Construction contract, generating, RUS Form 200.

The contract form in this section shall be used when required by this part.

Construction Contract—Generating

Notice and Instructions to Bidders

- 1. Sealed proposals for the furnishing, delivery and installation of equipment and materials for the electric generating plant of (hereinafter called the "Owner") which is to be part of the system known as will be received by the Owner on o'clock \_\_.M.,\_ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.
- 2. Obtaining Documents. The Plans and Specifications 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 \$ all of which will be refunded to each bona fide bidder within ten days after the bid opening. The Plans and Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed, in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through The Administrator of the Rural Utilities Service (hereinafter called the "Administrator"), and of the Loan Contract between the Owner and any other lender may be examined at the office of the Owner. Each set of documents will have a serial number, given by the Engineer, and the number of each set with the name of the purchaser will be recorded by the Engineers. Bids will be accepted only from the original purchasers.
- 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, its license number, if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations of interlineations will be permitted, unless made before submission and initiated and
- 4. Familiarity with Conditions. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans and Specifications, Construction Drawings and forms of Contractor's Proposal and Acceptance, and Contractor's Bond on file with the Owner and with the Engineer, and shall become informed as to the location and nature of the

proposed construction, the ecological and environmental criteria to be followed, 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 and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-Back" Statute (48 Stat. 948) and regulations issued pursuant thereto.

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

6. The Time for Completion of the Project shall be as specified by the Engineer in the

Proposal.

- 7. Bid Bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposal, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.
- 8. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of \$100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties in a penal sum not less than the Contract price.
- 9. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to execute such counterparts of the Proposal or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose proposal is

accepted after another Bidder has previously refused or has been unable to execute the counterparts of the proposal or to furnish a satisfactory Contractor's Bond (where required.)

10. Factors in Deciding the Award of the Contract. 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 prices quoted in the Proposals, the following:

11. 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 modification 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.

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 prior to the acceptance thereof by the Owner.

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

14. Definition of Terms. The terms "Administrator", "Engineer", "Supervisor", "Project", "Completion of Construction" and "Completion of the Project," as used throughout this Contract, shall be as defined in Article VI, Section 1 of the Contractor's Proposal.

15. The Owner Represents:

(a) If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available to the successful Bidder at the locations specified before the time such materials are required for construction.

(b) All funds necessary for prompt payment for the construction of the Project will be available. If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representations, provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion, and provided, further, that such extension, if any, of the time of the completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a, hereof.

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Contractor's Proposal

To Furnish, Deliver and Install Equipment and Materials

\_ (hereinafter called the "Owner")