United States
Department of
Agriculture

Rural
Utilities
Service

RUS Form 773

December 1990

Miscellaneous Construction Work and Maintenance Services Contract

Miscellaneous Construction Work and Maintenance Services Contract

RUS Contract Form 773

December 1990

Borrower's RUS Designation _____

Contractor _____

Contract No. _____

Contract Date _____

Contract Amount _____

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 0572-0059. The time required to complete this information is estimated to average 30 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.

INSTRUCTIONS SHEET
FOR USE OF
RUS FORM 773

GENERAL

This Contract is intended for use with miscellaneous construction work and maintenance services whose total cost does not exceed $250,000. This contract may be for labor only, material only, or for labor and material. Close the contract out on RUS Form 771. Refer to 7 CFR Part 1753, Subpart I. There are no provisions to amend this contract. Several examples of the use of this contract are as follows:

1. Short outside plant extensions such as the plowing of drop wire or small pair count wire and cable,
2. Cable splicing,
3. Line removal,
4. Installation or movement of central office and electronic equipment,
5. Carpentry and painting,
6. Right-of-way clearing.

This contract does not require RUS approval; see 7 CFR 1753, Subpart I. This contract is not to be used with subcontractors.

SECTION I

a. The work order number assigned to the individual project should be referenced. In case of blanket work orders, where a single contract will serve several individual work orders, a suitable identifying number should be selected, from which individual projects can be identified. This number should relate to a force account work order that pertains to the same project when applicable.

b. Contractor's name; mailing address; license number, issuance state and expiration date, where applicable; borrower's corporate name; and RUS designation.

PROJECT

1. Give a brief description of the work to be performed.
2. Self-explanatory.
3. Self-explanatory.
4. If yes, attach a separate and complete list of materials to be furnished. See Section II, General Provisions.
5. Identify appropriate exchanges.
6. Hourly rates for labor and/or equipment should be specified as necessary. Lump sum(s) should be identified and specified as appropriate. Units should be standard RUS units, when appropriate.
7. The maximum closeout amount of this Contract cannot exceed $250,000. Unless otherwise directed, invoices are to be submitted to the Owner.
8. Define a time for construction that is realistic for the work to be performed and which will meet the owner's requirements.

SECTION II - General Provisions

The borrower must attach all drawings, sketches, lists of materials, list of units, descriptions of work, references to appropriate standards, specifications, etc., so as to make them a part of this Contract. In addition, references should be made to Federal, State, Local, and other requirements, if any, as appropriate, in the attachments to this contract. Examples of this would be local codes, utility regulations, etc. RUS Form 270, as indicated in Paragraph 15 should be attached and properly executed.

Borrowers must comply with all applicable requirements imposed by Executive Orders 12549 and 12689, Debarment and Suspension, and any rules or regulations issued thereunder, including 7 CFR Part 3017.

U. S. DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE
CONTRACT ATTACHMENT

Pursuant to the Department of Agriculture Reorganization Act of 1994 (Title II of Public Law No. 103 - 54), the United States Secretary of Agriculture simultaneously abolished the Rural Electrification Administration (REA) and established the Rural Utilities Service (RUS) to succeed REA as the agency for carrying out electric and telephone loan program activities authorized by law, including the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.).

MISCELLANEOUS CONSTRUCTION WORK AND MAINTENANCE SERVICES CONTRACT

SECTION I

W. O. Number_____ *(Enter this number on all attachments, invoices and related correspondence).*

This Contract is entered into this _____ day of 20_____ between _____

_____

(hereinafter called "Contractor", *(Contractor's License No.* _____),

Issuance State _____ , Expiration Date _____

of , _____
(Mailing Address)

_____ ; _____ ; _____ ,
(City) *(State)* *(Zip)*

and , _____

_____

(hereinafter called "Owner"), known as _____
(RUS Designation: State, No., Letter)

PROJECT

1. Description of work:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
(hereinafter called the "Project").

Indicate if drawings, specifications, or other further description is attached and made part of this agreement: *(Check One)* NO _____ YES_____

2. Project is for: *(Check One)* Construction _____ Maintenance _____

3. Evidence of insurance is required *(See Section III).*

4. The Owner will furnish material? *(Check One)* NO _____ YES_____ *(See Attached List).*

5. All work on this Contract will be performed in the Owner's exchange(s) of_____

6. The method of payment for performance shall be:
(Specify rate[s])

Hourly basis

Lump-Sum *(Explain as necessary)*

Unit basis *(Describe unit[s])*

No payment shall be due under this agreement while the Contractor is in default of any provision hereof.

7. The maximum amount of this Contract shall be $ _____ . Payment shall be due and payable in accordance with the following schedule:

Invoices are to be submitted to:

A duly executed RUS Form 743, Certificate of Contractor and Indemnity Agreement, shall accompany the final invoice. *(A copy to be attached to the contract.)*

8. The Contractor shall begin performance of this Contract no later than _____ and shall complete performance no later than _____ .

SECTION II - GENERAL PROVISIONS

1. **Notification of Injury or Damage:** The Contractor shall promptly notify the Owner of any injury, death, loss, or damage to persons, animals, or property which is in any way related to the work performed under this Contract, even though such occurrence was not caused or contributed to by the Contractor or the contractor's employees and agents.

2. **Withholding of Payments:** The Owner may withhold money due for portions of the Project which have been rejected by the Owner and which have not been corrected by the Contractor to the satisfaction of the Owner. The Contractor shall pay each material supplier, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed on account of materials furnished by each material supplier. The Owner may withhold money due for claims which might be the subject of reimbursement to the Owner by the Contractor. If the Owner is advised that the Contractor is not promptly paying material suppliers as set out above, or if the Owner is advised that employees of the Contractor are not being promptly paid, then the Owner may withhold such money due as the Owner deems sufficient to insure the obligations incurred by the Contractor in connection with the work covered by this Contract will be paid in full.

3. **Changes in Project:** The Owner may make changes in the Project by altering, adding or deducting from the Project. No change in the Contract price shall be made for minor changes not involving extra cost. All adjustments in the Contract price by reason of any other change shall be agreed to by the parties prior to commencement of the actual work in connection with such change.

4. **Standards of Work:** All work performed under this Contract shall conform to applicable current Rural Utilities Service *(hereinafter called "RUS")* standards and specifications.

The Contractor shall furnish and be responsible for all supervision, labor, tools, equipment, power, transportation, material, and supplies required to perform the work, except those items specifically listed which will be furnished by the Owner. The Contractor shall pick up and transport such material and equipment from its place of storage to the job site as needed. The Contractor shall transport and return to a place of storage designated by the Owner unused material and equipment belonging to the Owner.

5. **Provision of Materials:** In the performance of this Contract there shall be used only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials', and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States: Provided, that foreign articles, materials, or supplies may be used in the event and to the extent that the RUS 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. The Contractor agrees to submit to the Owner such certificate or certificates, signed by the Contractor with respect to compliance with the foregoing provisions as the RUS Administrator from time to time may require.

All materials and equipment furnished by the Contractor, shall be listed in the latest List of Materials Acceptable for Use on Telephone Systems of RUS Borrowers. The Contractor shall purchase materials and supplies outright and not subject to any conditional sales agreement, bailment lease, or other agreement reserving to the seller any right, title or interest therein.

All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner on completion of construction and at such time as the Contractor receives final payment.

The Contractor shall save harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any materials or equipment provided by the Contractor used in construction of the Project.

It shall be the duty of the Contractor to inspect all material used in the performance of the work, whether or not furnished by the Owner. The Contractor shall not use any defective- material in the performance of work.

The Contractor shall reimburse the Owner or shall replace at no cost to the Owner any material or property destroyed, damaged, or lost, regardless of cause, in the performance of the Contract.

6. **Laws and Regulations:** The Contractor shall comply with all Federal, State, and Municipal Laws, ordinances and regulations and building and construction codes applicable to the performance of the work and give all notices that may be required. If the Contractor observes that the work to be performed is at variance with any law, ordinance, or regulation or building or construction code, he shall promptly notify the Owner. The Contractor shall follow the instructions of Government officials regarding maintenance of traffic and protection of the public. The Contractor shall obtain a copy of regulations or permit requirements of the appropriate Road authorities and make all employees aware of these regulations.

The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the Anti-Kickbact Acts, as amended (40 USC 276c; 41 USC 51 et seq.) and regulations issued pursuant thereto, and 18 U.S.C. 287, 874, 1001, as amended. The Contractor understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Government agencies having jurisdiction in the premises.

7. **Environmental Protection:** The Contractor shall perform work in such a manner as to maximize preservation of beauty and conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. The Contractor shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Contractor shall follow, under the general direction of the Owner, the criteria relating to environmental protection as specified herein by the Owner.

8. **Inspection of Work:** The Owner may maintain inspectors at the job site, and to further assure compliance with the plans and specifications and maintain quality of construction, may, after reasonable notice to the Contractor, perform from time to time operational tests on the Project or a portion or portions thereof selected by the Owner. However, such inspectors or other employees or agents of the Owner shall not have authority to direct or advise the Contractor or his employees and agents concerning the method or manner by which the work is to be performed. The Contractor has sole authority, responsibility, and control over the method and manner by which the work is to be performed and shall remain in all respects an independent contractor.

9. **Service Pipes and Underground Structures:** The Contractor at the Contractor's expense shall locate any pipes, conduits or other underground structures or obstructions which are in the way of the construction, whether or not any work plans omit to show or purport to show their locations. All such property damaged in the course of the work shall be repaired by the Contractor in a manner satisfactory to the Owner.

10. **Duty of Safe Performance:** The Contractor shall at all times take all reasonable precautions to protect all persons and property, including property of the Owner from injury arising out of the performance of the work. The Contractor shall make such inspections, safety checks, and tests, and shall provide such equipment, personnel, and supervision as is necessary to insure the safe performance of the work.

11. **Defects in Work:** The Contractor shall correct at its expense all defects and deficiencies in the work which result from labor or material furnished by the Contractor, workmanship, or failure to follow the plans, drawings, RUS standards, or other specifications made a part of this Contract, which are discovered within one (1) year from the date the work is accepted. Acceptance of the work by the Owner shall not constitute a waiver or any such defects deficiencies. The Owner shall notify the Contractor in writing of any defects and deficiencies and if the Contractor has failed to remedy or make arrangements satisfactory to the Owner and RUS to remedy such defects and deficiencies within twenty (20) days thereafter, the Owner may remedy such defects and deficiencies and the Contractor shall pay the Owner the cost of making such corrections.

12. **Completion on Contractor's Defaults:** If default shall be made by the Contractor in the performance of any of the terms of this Contract, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made by the Contractor, the Owner may take over the construction of the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Contractor which may be situated at the site on the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Contract and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

13. **Indemnification:** The Contractor agrees to indemnify and hold harmless the Owner from any and all claims, actions, or causes of action to the extent the claimed loss or damage arises out of the Contractor's negligent performance or nonperformance of work herein contracted to be done whether such claims, actions, or causes of action are alleged to be the results of any act or omission of the Contractor, agents, servants, employees, or any or all of them and regardless of the fact that the work may have been completed and accepted by the Owner and regardless of the fact the Contractor may have received payment for work. The Owner shall promptly notify the Contractor in writing of any such claims, actions, or causes of action and give the Contractor full opportunity and authority to assume the sole defense and settlement thereof. The Owner shall furnish to the Contractor upon request all information available to the Owner for defense against any claim, action, or cause of action. The Contractor's liability under this indemnity shall not exceed the value of the Contract except for those claims involving personal injury or tangible property damage.

14. **Miscellaneous:** The Contractor has made a careful examination of the site of the Project and conditions which may affect work under this Contract.

The Contractor will build the outside plant facilities under the Contract on rights-of-way provided by the Owner including, where directed by the Owner, rights-of-way presently occupied by existing facilities of the Owner. The Contractor will use no explosive in the performance of work under this Contract without the prior written approval of the Owner. All permits necessary for the handling or use of dynamite or other explosives in connection with construction of the Project shall be obtained by and at the expense of the Contractor.

Except as otherwise agreed to by the Owner, all work shall be performed without interruption to or interference with existing telephone service.

The Contractor shall not assign this contract or any part thereof, or enter into any contract with any person, firm, or corporation for performance of the Contractor's obligations hereunder, or any part of such obligations.

15. **Nondiscrimination:** (See RUS Form 270, to be attached to this contract.)

16. **Debarment:** The Contractor represents that to the extent required, it has complied with Executive Orders 12549 and 12689, Debarment and Suspension, and any rules or regulations issued thereunder, including 7 CFR Part 3017.

Note: The penalty for making false statements in offers is prescribed in 10 U.S.C. 1001.

SECTION III - INSURANCE

During the Contractor's performance hereunder, the Contractor shall take out and maintain fully paid insurance providing not less than the minimum coverage required by 7 CFR 1788, Subpart C.

The Owner may at any time require public liability insurance and property damage liability insurance greater than that required in 7 CFR 1788, Subpart C. In any such event, the additional premium or premium payable solely as the result of such additional insurance shall be added to the contract price.

Where the performance of the work involves "structural property, underground property, or blasting," the Contractor's comprehensive general liability insurance policy shall ~~coverage~~ to the insured for legal liability arising from operations under this contract for property damage (1) arising out of blasting, (2) arising out of collapse of or structural injury to any building or structure, or (3) to underground facilities and utilities.

I have read, understand, and agree to all portions of this Contract.

_____
(Contractor)

By _____

Title _____ Date ____-____-____

_____
(Owner)

By _____

Title _____ Date ____-____-____