



Post-Award Financial Compliance

USDA RUS ReConnect Program



Rural Development

Agenda

- Compliance Resources
- Project Completion
- Affiliated Transactions
- Records Retention
- Disallowances

Compliance Resources



Compliance Resources

- ReConnect Funding Opportunity Announcement – Round Three (FOA)
- Award Documents (Loan/Grant and Security Agreements)
- ReConnect Program Construction Procedures
- ReConnect Loan and Grant Program Website: <https://www.usda.gov/reconnect>

Cross-Referencing Compliance Resources

- The FOA requires that all project assets must comply with the ReConnect Program Construction Procedures
- The FOA requires Awardees to comply with all terms, conditions, affirmative covenants, and negative covenants contained in the award documents.
- The FOA, ReConnect Program Construction Procedures, and Award documents all reference other regulations that must be followed.

Project Completion



Project Completion

FOA

- Projects must be completed within 5 years from the date funds are first made available
- Build-out is considered complete when the network design has been fully implemented, the service operations and management systems infrastructure is operational, and the awardee is ready to support the activation and commissioning of individual customers to the new system

Award Documents (Section 3.1 Loan and Grant Amounts, Interest Rate, and Expiration Date)

- Expiration date = 5 years from the release of funds date

Affiliated Transactions



Affiliated Transactions

Award Documents (Section 7.13 Affiliated Transactions)

- The Awardee shall not enter into any transaction, contract, or dealing with an Affiliate of the Awardee or with the Awardee's or Affiliate's directors, trustees, officers, managers, members (if the Awardee is a limited liability company), or other corporate officials, without the prior written consent of RUS. RUS' consent to advance loan funds for affiliated transactions will be limited to an amount which is the lower of cost or market rate and which is subject to verification by RUS and its representatives having access to the books and records of the Affiliate

Affiliated Transactions (continued)

Award Documents (Article I – Definitions)

- "Affiliate" or "Affiliated Company" of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), Consolidation of Variable Interest Entities. For the purpose of this definition, "control" means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services

Affiliated Transactions (continued)

ReConnect Construction Procedures

- With regard to the Project, the Awardee shall not enter into any transaction, contract, or dealing with an Affiliate of the Awardee or with the Awardee's or Affiliate's directors, trustees, officers, managers, members (if the Awardee is a limited liability company), or other corporate officials, without the prior written consent of RUS. RUS' consent to advance award funds for affiliated transactions will be limited to an amount which is the lower of cost or market rate and which is subject to verification by RUS and its representatives having access to the books and records of the Affiliate

Affiliated Transactions (continued)

ReConnect Construction Procedures

- All costs associated with construction of ReConnect Project assets by affiliates will be accumulated and supported as if the ReConnect Awardee were performing the construction themselves using a workorder system. For guidance on establishing an acceptable work order system, Awardees and the Affiliated Party should review REA Bulletin 1770-1, REA Work Order Procedure. The costs of affiliated party construction that RUS will finance through the ReConnect Program are divided into three categories and are limited to the following restrictions:

Affiliated Transactions (continued)

ReConnect Construction Procedures - Labor

Labor:

- Only labor directly associated with the construction of the ReConnect project assets will be eligible for financing through RUS. This is limited to the amounts paid to laborers constructing the assets, in-house engineers (if approved by RUS), and direct supervision of construction by first line supervisors overseeing the construction. RUS will not finance any supervision above the level of the direct supervisor working in the field. (first line supervisor) RUS will not finance the payroll of any executive or senior level supervisor of the affiliate, regardless of their role, unless negotiated with RUS and approved in writing prior to construction activities occur.

Affiliated Transactions (continued)

ReConnect Construction Procedures - Labor

Labor (continued):

- The labor rates must be supported by payroll records. (limited to actual rates paid and cannot be higher than what the employee is normally paid. In other words, the employees cannot be paid a premium just because they are working on the ReConnect project)
- All affiliated party employees charging time to the ReConnect award must maintain contemporaneous timesheets that account for all of the employees' hours and must also identify the times and functions of what the employee worked on, including the ReConnect Project.

Affiliated Transactions (continued)

ReConnect Construction Procedures - Material

Material:

- Only the actual cost of materials associated with the construction of the ReConnect project assets are eligible for financing through RUS.
 - Material can be directly purchased for the ReConnect Project in which case the actual cost of the materials is supported with Vendor Invoices and material issuance tickets.
 - Material can be taken out of inventory and used on the ReConnect Project, in which case the actual cost will be supported by the perpetual inventory average unit costs, supported with vendor invoices for material purchases, and material issuance tickets.
 - There are no markups allowed, only the actual cost supported with third party (non-affiliated party) invoices.
- Material must be tracked to identify material issued to the ReConnect project or returned to inventory if previously issued and not used.

Affiliated Transactions (continued)

ReConnect Construction Procedures - Material

Material (continued):

- Exempt material: Material that is of low cost and used in high quantities, making it impractical to track the usage. (Example: Nuts, bolts, and other similar items)
 - Can be spread similar to an overhead based on materials issued. (percentage of material issued)
 - Must be spread equitably to all accounts where materials are used, not just to the ReConnect Project.

Affiliated Transactions (continued)

ReConnect Construction Procedures - Overhead

Overhead costs:

- Only direct overheads that have a direct relationship to the construction of ReConnect Assets are financeable through RUS.
- Direct Overhead Costs include:
 - Employer portion of payroll taxes
 - Workers Compensation insurance costs
 - Employer portion of employee benefits (Pension, health, life, LTD, Savings
 - Compensated absences
 - Provisioning/Stores Expense (Costs of operating the stock room/warehouse)
 - Vehicle expense
- Power operated equipment expense

Affiliated Transactions (continued)

ReConnect Construction Procedures - Overhead

Overhead costs (continued):

- These costs must be allocated/spread to all accounts that received a portion of the benefits. (Normally spread based on labor hours, labor dollars, mileage, or usage; depending on the overhead) and substantiated by the underlying actual documentation such as timesheets, mileage odometers, and/or actual invoices.
- The allocation/spread to all accounts must be reasonable and equitable.
- RUS will not finance engineering overheads, administrative overheads, or any other overheads that are not specifically mentioned above unless the Awardee negotiates with RUS and receives prior written approval identifying the additional specific overheads an affiliate charges the Awardee.

Affiliated Transactions (continued)

ReConnect Construction Procedures

- 1) All affiliated party billings to the Awardee must be directly supported with the cost items identified above. Only the costs identified above should be submitted to RUS for financing. Any profit margin or other costs not covered on this document must be clearly identified on the billings and removed from financing requests submitted to RUS.
- 2) This applies for all matching requirements, grant funded, or loan funded ReConnect Project costs.
- 3) All costs financed must also meet the criteria of 2 CFR 200 subpart E – Cost Principles and must be reasonable, allocable, and eligible.
- 4) RUS may disallow all costs associated with funding requests if additional costs or amounts are comingled on submitted financing requests.
- 5) If RUS is denied or is not given access to the supporting documentation from the affiliated party, then affiliated party costs will be subject to disallowance.

Records Retention



Records Retention

FOA

- Retained and preserved in accordance with 7 CFR 1770 A
 - Construction – retained until audited and approved by RUS
 - Plant in service – retained until facilities are permanently removed from utility service
 - Life and mortality study data supporting depreciation – retained 25 years or for 10 years after plant is retired, which ever is longer

Award Documents (Section 6.1 Financial Records)

- The Awardee shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, invoices, receipts, payroll records and bills of sale, adequate to identify the purposes for which, and the manner in which Loan, Grant, and other funds were expended on the Project. The Awardee shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all dealings, business, and affairs of the Awardee and its Subsidiaries, in accordance with its system of accounts
- The Awardee shall maintain copies of all documents submitted to RUS in connection with the Award until the longer of (i) the Loan being paid in full and all audits have been completed, (ii) the term of this Agreement or (iii) three years subsequent to close-out of the Award

Records Retention (continued)

ReConnect Construction Procedures

- Records supporting all assets financed by RUS shall be retained until audited and approved by RUS. Records must be sufficient to document the cost and location of all expenditures and to support advances and disbursement of award funds. The support records must include, but not limited to, contracts, third party invoices, timesheets, payroll records, material records, and overhead allocation records and summary schedules
- Records related to plant-in-service must be retained until the facilities are permanently removed from utility service, all removal and restoration activities are completed, and all costs are retired from the accounting records unless accounting adjustments resulting from reclassification and original costs studies have been approved by RUS or other regulatory body having jurisdiction

Disallowances



Disallowances

Award Documents (Section 8.3 Disallowed Expenditures)

- If RUS determines that the Awardee did not expend award funds on eligible purposes in accordance with approved line item budget and Form(s) 481 approved by RUS prior to the advance of funds, RUS may, in its sole discretion:
 - Disallow all or a part of the expenditures and disbursements
 - Require a deposit into the pledged deposit account to be used for other RUS approved purposes
 - Require reimbursement of the Government directly
 - Suspend future Advances
 - Take any other action RUS determines to be necessary

Disallowances

Award Documents (Section 5.3 Unused and Disallowed Advances)

- The Awardee shall reimburse RUS for any advanced funds whose original expenditure has been disallowed by and RUS loan and grant audit.
 - Satisfied as directed by RUS
 - Administrative offset against other approved purposes on Form(s) 481
 - Repaying the disallowed amount directly to the United States Treasury
 - Interest
 - Beginning on date RUS delivers a written demand for payment
 - Interest rate at the disallowed advance or US Treasury rate
 - Closeout of the Loan and/or Grant will not affect the right of RUS to disallow expenditures and recover in full any amount based on a subsequent audit or other review

Conditions of Award Documents



Conditions of Award Documents

Section 4.1 Conditions Precedent to Closing

- Legal Matters
- Loan-Grant Agreement
- Filed and Recorded Security Documents
- Articles of Incorporation, Charter Bylaws and Organizational Documents
- Authorizations
- Approvals
- Title Evidence
- Management, Service, and Operating Agreements
- Opinion of Counsel
- Additional Conditions

Conditions of Award Documents (continued)

Section 4.2 General Conditions Precedent to RUS' Obligations to Release Funds for Advance

- Service Rate Evidence
- Current Financial Information and Certificate of Authority
- Deposited Funds
- Additional Conditions

Conditions of Award Documents (continued)

Section 4.3 Conditions to Individual Advances

- Continuing Representations and Warranties
- Material Adverse Affect
- Event of Default
- Requisitions and Supporting Documentation
- Flood Insurance
- Current Financial Information
- Compliance with Buildout Timeline and Reporting Requirements
- Compliance with Loan/Grant Agreement
- Permits, Licenses and Franchises
- Deposited Funds
- Additional Documents
- Additional Conditions





Rural Development