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(1) The consortium's selection criteria and evaluation for "cost-effectiveness" pursuant to § 54.642 cannot provide a preference to bidders that offer to construct excess capacity.

(2) The applicant must pay the full amount of the additional costs for excess capacity facilities that will not be part of the supported health care network.

(3) The additional cost of constructing excess capacity facilities may not count toward a health care provider's required contribution.

(4) The inclusion of excess capacity facilities cannot increase the funded cost of the dedicated health care network in any way.

(5) An eligible health care provider (typically the consortium, although it may be an individual health care provider participating in the consortium) must retain ownership of the excess capacity facilities. It may make the facilities available to third parties only under an indefeasible right of use (IRU) or lease arrangement. The lease or IRU between the participant and the third party must be an arm's length transaction. To ensure that this is an arm's length transaction, neither the vendor that installs the excess capacity facilities nor its affiliate is eligible to enter into an IRU or lease with the participant.

(6) Any amount prepaid for use of the excess capacity facilities (IRU or lease) must be placed in an escrow account. The participant can then use the escrow account as an eligible source of funds for the participant's 35 percent contribution to the project.

(7) All revenues from use of the excess capacity facilities by the third party must be used for the health care provider contribution or for sustainability of the health care network supported by the Healthcare Connect Fund. Network costs that may be funded with any additional revenues that remain include administration, equipment, software, legal fees, or other costs not covered by the Healthcare Connect Fund, as long as they are relevant to sustaining the network.

[78 FR 13985, Mar. 1, 2013]

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§ 54.634 Eligible services.

(a) *Eligible services.* Subject to the provisions of §§ 54.600 through 54.602 and §§ 54.630 through 54.680, eligible health care providers may request support from the Healthcare Connect Fund for any advanced telecommunications or information service that enables health care providers to post their own data, interact with stored data, generate new data, or communicate, by providing connectivity over private dedicated networks or the public Internet for the provision of health information technology.

(b) *Eligibility of dark fiber.* A consortium of eligible health care providers may receive support for "dark" fiber where the customer, not the vendor, provides the modulating electronics, subject to the following limitations:

(1) Support for recurring charges associated with dark fiber is only available once the dark fiber is "lit" and actually being used by the health care provider. Support for non-recurring charges for dark fiber is only available for fiber lit within the same funding year, but applicants may receive up to a one-year extension to light fiber if they provide documentation to the Administrator that construction was unavoidably delayed due to weather or other reasons.

(2) Requests for proposals (RFPs) that solicit dark fiber solutions must also solicit proposals to provide the needed services over lit fiber over a time period comparable to the duration of the dark fiber lease or indefeasible right of use.

(3) If an applicant intends to request support for equipment and maintenance costs associated with lighting and operating dark fiber, it must include such elements in the same RFP as the dark fiber so that the Administrator can review all costs associated with the fiber when determining whether the applicant chose the most cost-effective bid.

(c) *Dark and lit fiber maintenance costs.* (1) Both individual and consortium applicants may receive support for recurring maintenance costs associated with leases of dark or lit fiber.

(2) Consortium applicants may receive support for upfront payments for maintenance costs associated with

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leases of dark or lit fiber, subject to the limitations in §54.638.

(d) *Reasonable and customary installation charges.* Eligible health care providers may obtain support for reasonable and customary installation charges for eligible services, up to an undiscounted cost of \$5,000 per eligible site.

(e) *Upfront charges for vendor deployment of new or upgraded facilities.* (1) Participants may obtain support for upfront charges for vendor deployment of new or upgraded facilities to serve eligible sites.

(2) Support is available to extend vendor deployment of facilities up to the “demarcation point,” which is the boundary between facilities owned or controlled by the vendor, and facilities owned or controlled by the customer.

[78 FR 13986, Mar. 1, 2013]

§ 54.635 Eligible equipment.

(a) Both individual and consortium applicants may receive support for network equipment necessary to make functional an eligible service that is supported under the Healthcare Connect Fund.

(b) Consortium applicants may also receive support for network equipment necessary to manage, control, or maintain an eligible service or a dedicated health care broadband network. Support for network equipment is not available for networks that are not dedicated to health care.

(c) Network equipment eligible for support includes the following:

(1) Equipment that terminates a carrier’s or other provider’s transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment. This includes equipment required to light dark fiber, or equipment necessary to connect dedicated health care broadband networks or individual health care providers to middle mile or backbone networks;

(2) Computers, including servers, and related hardware (*e.g.* printers, scanners, laptops) that are used exclusively for network management;

(3) Software used for network management, maintenance, or other network operations, and development of software that supports network man-

agement, maintenance, and other network operations;

(4) Costs of engineering, furnishing (*i.e.* as delivered from the manufacturer), and installing network equipment; and

(5) Equipment that is a necessary part of health care provider-owned network facilities.

(d) Additional limitations: Support for network equipment is limited to equipment:

(1) Purchased or leased by a Consortium Leader or eligible health care provider; and

(2) Used for health care purposes.

[78 FR 13986, Mar. 1, 2013]

§ 54.636 Eligible participant-constructed and owned network facilities for consortium applicants.

(a) Subject to the funding limitations under §§54.675 and 54.638 and the following restrictions, consortium applicants may receive support for network facilities that will be constructed and owned by the consortium (if the consortium is an eligible health care provider) or eligible health care providers within the consortium.

(1) Consortia seeking support to construct and own network facilities are required to solicit bids for both:

(i) Services provided over third-party networks; and

(ii) Construction of participant-owned network facilities, in the same request for proposals. Requests for proposals must provide sufficient detail so that cost-effectiveness can be evaluated over the useful life of the proposed network facility to be constructed.

(2) Support for participant-constructed and owned network facilities is only available where the consortium demonstrates that constructing its own network facilities is the most cost-effective option after competitive bidding, pursuant to §54.642.

(b) [Reserved]

[78 FR 13987, Mar. 1, 2013]

§ 54.637 Off-site data centers and off-site administrative offices.

(a) The connections and network equipment associated with off-site data centers and off-site administrative offices used by eligible health care providers for their health care purposes