

TABLE 1 TO PARAGRAPH (b)—PRIORITIZATION SCHEDULE

Health care provider site is located in:	In a medically underserved area/population (MUA/P)	Not in MUA/P
<i>Extremely Rural Tier</i> (counties entirely outside of a Core Based Statistical Area).	<i>Priority 1</i>	<i>Priority 4.</i>
<i>Rural Tier</i> (census tracts within a Core Based Statistical Area that does not have an urban area or urban cluster with a population equal to or greater than 25,000).	<i>Priority 2</i>	<i>Priority 5.</i>
<i>Less Rural Tier</i> (census tracts within a Core Based Statistical Area with an urban area or urban cluster with a population equal to or greater than 25,000, but where the census tract does not contain any part of an urban area or urban cluster with population equal to or greater than 25,000).	<i>Priority 3</i>	<i>Priority 6.</i>
<i>Non-Rural Tier</i> (all other non-rural areas)	<i>Priority 7</i>	<i>Priority 8.</i>

(1) *Application of prioritization schedule.* The Administrator shall fully fund all eligible requests falling under the first prioritization category before funding requests in the next lower prioritization category. The Administrator shall continue to process all funding requests by prioritization category until there are no available funds remaining. If there is insufficient funding to fully fund all requests in a particular prioritization category, then the Administrator will pro-rate the available funding among all eligible requests in that prioritization category only pursuant to the proration process described in paragraph (b)(2) in this section.

(2) *Pro-rata reductions.* The Administrator shall act in accordance with this section when a filing window period for the Telecommunications Program and the Healthcare Connect Fund Program, as described in paragraph (a) in this section, is in effect. When a filing window period described in paragraph (a) in this section closes, the Administrator shall calculate the total demand for Telecommunications Program and Healthcare Connect Fund Program support submitted by all applicants during the filing window period. If the total demand during a filing window period exceeds the total remaining support available for the funding year, the Administrator shall take the following steps:

(i) The Administrator shall divide the total remaining funds available for the funding year by the demand within the specific prioritization category to produce a pro-rata factor;

(ii) The Administrator shall multiply the pro-rata factor by the total dollar amount requested by each applicant in the prioritization category; and

(iii) The Administrator shall commit funds to each applicant for Telecommunications Program and Healthcare Connect Fund Program support consistent with this calculation.

§ 54.622 Competitive bidding requirements and exemptions.

(a) *Competitive bidding requirement.* All applicants are required to engage in a competitive bidding process for supported services, facilities, or equipment, as applicable, consistent with the requirements set forth in this section and any additional applicable state, Tribal, local, or other procurement requirements, unless they qualify for an exemption listed in paragraph (j) in this section. In addition, applicants may engage in competitive bidding even if they qualify for an exemption. Applicants who utilize a competitive bidding exemption may proceed directly to filing a funding request as described in § 54.623.

(b) *Fair and open process.* (1) Applicants participating in the Telecommunications Program or Healthcare Connect Fund Program must conduct a fair and open competitive bidding process. The following actions are necessary to satisfy the “fair and open” competitive standard in the Telecommunications Program and the Healthcare Connect Fund Program:

(i) All potential bidders and service providers must have access to the same information and must be treated in the

same manner throughout the procurement process.

(ii) Service providers who intend to bid on supported services may not simultaneously help the applicant complete its request for proposal (RFP) or Request for Services form.

(iii) Service providers who have submitted a bid to provide supported services, equipment, or facilities to a health care provider may not simultaneously help the health care provider evaluate submitted bids or choose a winning bid.

(iv) Applicants must respond to all service providers that have submitted questions or proposals during the competitive bidding process.

(v) All applicants and service providers must comply with any applicable state, Tribal, or local procurement laws, in addition to the Commission's competitive bidding requirements. The competitive bidding requirements in this section are not intended to preempt such state, Tribal, or local requirements.

(c) *Selecting a cost-effective service.* In selecting a provider of eligible services, the applicant shall carefully consider all bids submitted and must select the most cost-effective means of meeting its specific health care needs. "Cost-effective" is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services. In the Healthcare Connect Fund Program, when choosing the most "cost-effective" bid, price must be a primary factor, but need not be the only primary factor. A non-price factor may receive an equal weight to price, but may not receive a greater weight than price.

(d) *Bid evaluation criteria.* Applicants must develop weighted evaluation criteria (e.g., a scoring matrix) that demonstrates how the applicant will choose the most cost-effective bid before submitting its request for services. The applicant must specify on its bid evaluation worksheet and/or scoring matrix the requested services for which it seeks bids, the information provided to bidders to allow bidders to reasonably determine the needs of the applicant,

its minimum requirements for the developed weighted evaluation criteria, and each service provider's proposed service levels for the criteria. The applicant must also specify the disqualification factors, if any, that it will use to remove bids or bidders from further consideration. After reviewing the bid submissions and identifying the bids that satisfy the applicant's specific needs, the applicant must then select the service provider that offers the most cost-effective service.

(e) *Request for Services.* Applicants must submit the following documents to the Administrator in order to initiate competitive bidding:

(1) *Request for Services, including certifications.* The applicant must submit a Request for Services and make the following certifications as part of its Request for Services:

(i) The health care provider seeking supported services is a public or non-profit entity that falls within one of the seven categories set forth in the definition of health care provider, listed in § 54.600;

(ii) The health care provider seeking supported services is physically located in a rural area as defined in § 54.600, or is a member of a Healthcare Connect Fund Program consortium which satisfies the rural health care provider composition requirements set forth in § 54.607(b);

(iii) The person signing the application is authorized to submit the application on behalf of the health care provider or consortium applicant;

(iv) The person signing the application has examined the Request for Services and all attachments, and to the best of his or her knowledge, information, and belief, all statements contained in the request are true;

(v) The applicant has complied with any applicable state, Tribal, or local procurement rules;

(vi) All requested Rural Health Care Program support will be used solely for purposes reasonably related to the provision of health care service or instruction that the health care provider is legally authorized to provide under the law of the state in which the services are provided;

(vii) The supported services will not be sold, resold, or transferred in consideration for money or any other thing of value;

(viii) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules; and

(ix) The applicant has reviewed all applicable requirements for the Telecommunications Program or the Healthcare Connect Fund Program, as applicable, and will comply with those requirements.

(2) *Aggregated purchase details.* If the service or services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement, including the identities of all co-purchasers and the portion of the service or services being purchased by the health care provider, must be submitted.

(3) *Bid evaluation criteria.* Requirements for bid evaluation criteria are described in paragraph (d) in this section and must be included with the applicant's Request for Services.

(4) *Declaration of Assistance.* All applicants must submit a "Declaration of Assistance" with their Request for Services. In the Declaration of Assistance, the applicant must identify each and every consultant, service provider, and other outside expert, whether paid or unpaid, who aided in the preparation of its applications. The applicant must also describe the nature of the relationship it has with each consultant, service provider, or other outside expert providing such assistance.

(5) *Request for proposal (if applicable).*

(i) Any applicant may use an RFP. Applicants who use an RFP must submit the RFP and any additional relevant bidding information to the Administrator with its Request for Services.

(ii) An applicant must submit an RFP:

(A) If it is required to issue an RFP under applicable State, Tribal, or local procurement rules or regulations;

(B) If the applicant is a consortium seeking more than \$100,000 in program support during the funding year, including applications that seek more than \$100,000 in program support for a multi-year commitment; or

(C) If the applicant is a consortium seeking support for participant-constructed and owned network facilities.

(iii) RFP requirements.

(A) An RFP must provide sufficient information to enable an effective competitive bidding process, including describing the health care provider's service needs and defining the scope of the project and network costs (if applicable).

(B) An RFP must specify the time period during which bids will be accepted.

(C) An RFP must include the bid evaluation criteria described in paragraph (d) in this section, and solicit sufficient information so that the criteria can be applied effectively.

(D) Consortium applicants seeking support for long-term capital investments whose useful life extends beyond the time period of the funding commitment (*e.g.*, facilities constructed and owned by the applicant, fiber indefeasible rights of use) must seek bids in the same RFP from service providers who propose to meet those needs via services provided over service provider-owned facilities, for a time period comparable to the life of the proposed capital investment.

(E) Applicants may prepare RFPs in any manner that complies with the rules in this subpart and any applicable state, Tribal, or local procurement rules or regulations.

(6) *Additional requirements for Healthcare Connect Fund Program consortium applicants.*

(i) *Network plan.* Consortium applicants must submit a narrative describing specific elements of their network plan with their Request for Services. Consortia applicants are required to use program support for the purposes described in their narrative. The required elements of the narrative include:

(A) Goals and objectives of the network;

(B) Strategy for aggregating the specific needs of health care providers (including providers that serve rural areas) within a state or region;

(C) Strategy for leveraging existing technology to adopt the most efficient and cost-effective means of connecting those providers;

(D) How the supported network will be used to improve or provide health care delivery;

(E) Any previous experience in developing and managing health information technology (including telemedicine) programs; and

(F) A project management plan outlining the project's leadership and management structure, and a work plan, schedule, and budget.

(ii) *Letters of agency (LOA)*. Consortium applicants must submit LOAs pursuant to § 54.610.

(f) *Public posting by the Administrator*. The Administrator shall post on its website the following competitive bidding documents, as applicable:

- (1) Request for Services;
- (2) Bid evaluation criteria;
- (3) RFP; and

(4) Network plans for Healthcare Connect Fund Program applicants.

(g) *28-day waiting period*. After posting the documents described in paragraph (f) in this section, as applicable, on its website, the Administrator shall send confirmation of the posting to the applicant. The applicant shall wait at least 28 days from the date on which its competitive bidding documents are posted on the Administrator's website before selecting and committing to a service provider. The confirmation from the Administrator shall include the date after which the applicant may sign a contract with its chosen service provider(s).

(1) *Selection of the most "cost-effective" bid and contract negotiation*. Each applicant is required to certify to the Administrator that the selected bid is, to the best of the applicant's knowledge, the most cost-effective option available. Applicants are required to submit the documentation, identified in § 54.623, to support their certifications.

(2) Applicants who plan to request evergreen status under this section must enter into a contract that identifies both parties, is signed and dated by the health care provider or Consortium Leader after the 28-day waiting period expires, and specifies the type, term, and cost of service(s).

(h) *Gift restrictions*. (1) Subject to paragraphs (h)(3) and (4) in this section, an eligible health care provider or consortium that includes eligible

health care providers, may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the Rural Health Care Program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided in this section. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth \$20 or less, including meals, may be offered or provided, and accepted by any individual or entity subject to this rule, if the value of these items received by any individual does not exceed \$50 from any one service provider per funding year. The \$50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (h)(2)(ii) in this section.

(2) For purposes of this paragraph:

(i) The terms "health care provider" or "consortium" shall include all individuals who are on the governing boards of such entities and all employees, officers, representatives, agents, consultants, or independent contractors of such entities involved on behalf of such health care provider or consortium with the Rural Health Care Program, including individuals who prepare, approve, sign, or submit Rural Health Care Program applications, or other forms related to the Rural Health Care Program, or who prepare bids, communicate, or work with Rural Health Care Program service providers, consultants, or with the Administrator, as well as any staff of such entities responsible for monitoring compliance with the Rural Health Care Program; and

(ii) The term "service provider" includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, consultants, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity,

favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible health care provider or consortium that includes eligible health care providers, provided that such transactions:

(i) Are motivated solely by a personal relationship;

(ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible health care provider; and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible health care provider or consortium that includes eligible health care providers in the support of its programs as long as such contributions are not directly or indirectly related to the Rural Health Care Program procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other Rural Health Care Program rules, including those in § 54.611(a), requiring health care providers under the Healthcare Connect Fund Program to contribute 35 percent of the total cost of all eligible expenses.

(1) *Exemptions to the competitive bidding requirements*—(1) *Government Master Service Agreement (MSA)*. Eligible health care providers that seek support for services and equipment purchased from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such health care providers and others, if such MSAs were awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements, are exempt from the competitive bidding requirements under this section.

(2) *Master Service Agreements approved under the Rural Health Care Pilot Program or Healthcare Connect Fund Program*. An eligible health care provider site may opt into an existing MSA approved under the Rural Health Care Pilot Program or Healthcare Connect Fund Program and seek support for services and equipment purchased from the MSA without triggering the competitive bidding requirements under

this section, if the MSA was developed and negotiated in response to an RFP that specifically solicited proposals that included a mechanism for adding additional sites to the MSA.

(3) *Evergreen contracts*. (i) The Administrator may designate a multi-year contract as “evergreen,” which means that the service(s) covered by the contract need not be re-bid during the contract term.

(ii) A contract entered into by a health care provider or consortium as a result of competitive bidding may be designated as evergreen if it meets all of the following requirements:

(A) Is signed by the individual health care provider or consortium lead entity;

(B) Specifies the service type, bandwidth, and quantity;

(C) Specifies the term of the contract;

(D) Specifies the cost of services to be provided; and

(E) Includes the physical location or other identifying information of the health care provider sites purchasing from the contract.

(iii) Participants may exercise voluntary options to extend an evergreen contract without undergoing additional competitive bidding if:

(A) The voluntary extension(s) is memorialized in the evergreen contract;

(B) The decision to extend the contract occurs before the participant files its funding request for the funding year when the contract would otherwise expire; and

(C) The voluntary extension(s) do not exceed five years in the aggregate.

(4) *Schools and libraries program master contracts*. Subject to the provisions in § 54.500, § 54.501(c)(1), and § 54.503, an eligible health care provider in a consortium with participants in the schools and libraries universal service support program and a party to the consortium's existing contract is exempt from the competitive bidding requirements if the contract was approved in the schools and libraries universal service support program as a master contract. The health care provider must comply with all Rural Health Care Program rules and procedures except for those applicable to competitive bidding.

(5) *Annual undiscounted cost of \$10,000 or less.* An applicant under the Healthcare Connect Fund Program that seeks support for \$10,000 or less of total undiscounted eligible expenses for a single year is exempt from the competitive bidding requirements under this section, if the term of the contract is one year or less. This exemption does not apply to applicants under the Telecommunications Program.

§ 54.623 Funding requests.

(a) Once a service provider is selected, applicants must submit a Request for Funding (and supporting documentation) to provide information about the services, equipment, or facilities selected; rates, service provider(s); and date(s) of service provider selection, as applicable.

(1) *Certifications.* The applicant must provide the following certifications as part of its Request for Funding:

(i) The person signing the application is authorized to submit the application on behalf of the health care provider or consortium.

(ii) The applicant has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements of fact contained in this section are true.

(iii) The health care provider or consortium has considered all bids received and selected the most cost-effective method of providing the requested services.

(iv) All Rural Health Care Program support will be used only for eligible health care purposes.

(v) The health care provider or consortium is not requesting support for the same service from both the Telecommunications Program and the Healthcare Connect Fund Program.

(vi) The health care provider or consortium and/or its consultant, if applicable, has not solicited or accepted a gift or any other thing of value from a service provider participating in or seeking to participate in the Rural Health Care Program.

(vii) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules and understands that any letter from the Administrator that erroneously

commits funds for the benefit of the applicant may be subject to rescission.

(viii) The applicant has reviewed all applicable rules and requirements for the Rural Health Care Program and will comply with those rules and requirements.

(ix) The applicant will retain all documentation associated with the applications, including all bids, contracts, scoring matrices, and other information associated with the competitive bidding process, and all billing records for services received, for a period of at least five years.

(x) The consultants or third parties hired by the applicant do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services, and that they have otherwise complied with the Rural Health Care Program rules, including the Commission's rules requiring a fair and open competitive bidding process.

(xi) *Additional certification for the Telecom Program.* Telecom Program applicants must certify that the rural rate on their Request for Funding does not exceed the appropriate rural rate determined by the Administrator.

(2) *Contracts or other documentation.* All applicants must submit a contract or other documentation, as applicable, that clearly identifies the service provider(s) selected and the health care provider(s) who will receive the services; costs for which support is being requested; and the term of the service agreement(s) if applicable (*i.e.*, if services are not being provided on a month-to-month basis). For services provided under contract, the applicant must submit a copy of the contract signed and dated (after the Allowable Contract Selection Date) by the individual health care provider or Consortium Leader. If the services are not being provided under contract, the applicant must submit a bill, service offer, letter, or similar document from the service provider that provides the required information.

(3) *Competitive bidding documents.* Applicants must submit documentation to support their certifications that they have selected the most cost-effective option, including a copy of each