



HCF Program Training

Competitive Bidding



Important Caveat

This training is just a general overview and starting point for applicants

- Every applicant's situation is different
- The training does not cover every program requirement
- The training does not cover requirements for service providers and consultants

It is essential to read the following documents carefully as you proceed through the planning and application process:

- Healthcare Connect Fund Order (FCC 12-150), located at <http://www.fcc.gov/encyclopedia/rural-health-care>,
- The Rural Health Care Program rules, 47 C.F.R. §54.600-680, located at <http://www.ecfr.gov>, and
- The Healthcare Connect Fund Program forms and instructions (FCC Forms 460-463), located at <http://www.usac.org/rhc/healthcare-connect/tools/forms/default.aspx>.

Consult the FCC and USAC websites for additional resources.

Agenda

1. Competitive bidding overview
2. Fair and open process
3. Declaration of assistance
4. Evaluation criteria
5. Requirement to post an RFP
6. Network facilities and equipment
7. Competitive bidding exemptions
8. Evergreen contracts
9. Post-commitment activity

Competitive Bidding

Overview

All applicants must seek competitive bids for supported services and select the most cost-effective provider (unless they qualify for one of the competitive bidding exemptions).

- Applicants must post request for services for a minimum of 28 calendar days.
 - Applicants can choose to post for longer than 28 days.
 - USAC will post for the length of time requested by the applicant if longer than 28 days.
- The Allowable Contract Selection Date (ACSD) is the first day that the applicant can choose a service provider.

- USAC will post the applicant’s request for services on the USAC website.
- Posting includes the following documents:
 - FCC Form 461;
 - Participating entity listing;
 - Request for proposals (if applicable); and
 - Network plan.

What does “most cost-effective” mean?

- “[T]he 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.” (47 CFR Section 54.642(c))
- Price must be a **primary factor**. No single factor may receive a weight that is greater than price, although another factor may receive the same weight as price.



Competitive Bidding

Fair and Open Process



Fair and Open Process

HCF Order, Section VI.B.1

Service providers that intend to bid are prohibited from:

- Preparing, signing, or submitting an applicant's FCC Form 461 and supporting documents;
- Serving as consortium leader or other points of contact on behalf of applicants;
- Being involved in setting bid evaluation criteria; and
- Participating in the bid evaluation or service provider selection process (except in their role as a potential service provider).

Consultants, other third-party experts, or applicant employees who have an ownership interest, sales commissions arrangement, or other financial stake with respect to a bidding service provider are also prohibited from performing any of the four functions outlined in the previous slide on behalf of the applicant.

- **All potential bidders must have access to the same information and must be treated in the same manner.**
 - If an applicant modifies anything on any documents posted by USAC, the applicant must notify all potential bidders at the same time using a uniform method.
 - Applicants are required to immediately notify USAC of the modification. USAC will modify the original posting accordingly.
- **All applicants and service providers must comply with any applicable state or local competitive bidding requirements.**

- State organizations, public sector entities, or nonprofit entities may serve as lead entities or provide consulting assistance to consortia only if they do not participate as potential service providers during the competitive bidding process. (47 C.F.R. Section 54.631 (b))
- Such entities may request an exemption from this prohibition if they are sufficiently large and can demonstrate an organizational and functional separation of relevant staff. (HCF Order para. 205)

Competitive Bidding

Declaration of Assistance & Evaluation Criteria



Declaration of Assistance

HCF Order, Section VI.B.3

Applicants are required to identify any consultants, service providers, or other outside experts who aided in the preparation of the FCC Form 461 and supporting documentation.

- Whether paid or unpaid
- FCC Form 461, Block 4



Evaluation Criteria

HCF Order, Section VI.A.4

- Applicants must certify that they have selected the most cost-effective bid on their request for funding. (47 C.F.R. Section 54.603(b)(4))
- See slide 8 for the definition of “cost effective.”

Applicants are required to establish evaluation criteria:

- Block 5 of FCC Form 461
- Cost (price) of service must be a **primary factor**.
- No criteria can be weighted higher than cost, but can be weighted equal to cost.
- Total weight must equal 100 percent.
- Evaluation criteria should include most important criteria needed to provide healthcare, as determined by the applicant.

Smaller consortium applicants may find the following criteria to be sufficient to determine the most cost-effective bidder:

- Price;
- Bandwidth;
- Quality of transmission;
- Reliability;
- Prior experience with the service provider; and
- Technical support.

More complex projects, such as those that involve designing or constructing a new network or building upon an existing network, may include non-cost factors in their evaluation criteria, such as:

- Prior experience, including past performance;
- Personnel qualifications, including technical excellence;
- Management capability, including solicitation compliance; and
- Environmental objectives (if appropriate).

Competitive Bidding

Requirement to Post a Request for Proposal (RFP)

What is an RFP?

- “An RFP is a formal bidding document that describes a project and requested services in sufficient detail so that potential bidders understand the scope, location, and any other requirements.” (HCF Order para. 234)
- There is no FCC-prescribed format for RFPs, but the HCF Order provides guidance and required elements for RFPs.

Applicants must file an RFP with the FCC Form 461 if:

- It is required by state, Tribal, or local procurement rules and regulations,
- A consortium is seeking more than \$100,000 in program support in a funding year, or
- A consortium is seeking support for infrastructure (HCP owned facilities) or other long-term capital investment.

Any other applicant can choose to utilize an RFP in conjunction with its competitive bidding process.



Requirement to Post an RFP

Unless exempt from competitive bidding, USAC advises all consortia to post an RFP.

Why?

Future contract modifications and site/service substitution implications



Requirement to Post an RFP

Sample RFPs Available on USAC Website

- Small Consortium Leased Services RFP
- Medium Consortium Leased Services RFP
- Large Consortium Leased Services RFP



Competitive Bidding

HCP Owned and Leased Network Facilities and Equipment



Network Facilities and Equipment

HCF Order, Sections IV.C, V.A.3, V.A.7, and V.B

Consortium Applicants Eligible to Receive Support for:

- HCP-owned infrastructure (HCP-owned fiber),
- Indefeasible Rights of Use (IRUs) or pre-paid leases,
- Dark or lit fiber,
- Equipment necessary to make broadband service functional, and
- Upfront charges for the deployment of new or upgraded facilities.



Network Facilities and Equipment

HCF Order, Sections IV.C, VI.B.2

Special considerations when requesting support for HCP-owned facilities (47 C.F.R. Section 54.636):

- The applicant must include an RFP with FCC Form 461 for posting.
- If seeking support for long-term capital investments (such as HCP-constructed infrastructure or a fiber IRU), the applicant must also seek bids in the same RFP from service providers who propose to meet their needs via services provided over service provider-owned facilities for a comparable time period.
- To receive support, applicant must show that self-construction is the most cost-effective option.



Network Facilities and Equipment

HCF Order, Sections IV.C, VI.B.2

Special considerations when requesting support for HCP-owned facilities (47 C.F.R. Section 54.636):

- If self-construction is the most cost effective, the applicant must:
 - Submit a sustainability plan with the FCC Form 462 (47 CFR Section 54.634 (a)(iv)),
 - Meet the annual reporting requirement for the life of the asset (47 CFR Section 54.647), and
 - Maintain records to document compliance with rules for five years after the end of the useful life of the facility (47 CFR Section 54.648(b)(1)).

HCP-Owned Infrastructure

Solicitation in an RFP must be sufficiently detailed and include all expenses to operate, maintain, and manage the network so that the relative cost-effectiveness can be evaluated over the useful life of the facility.

Examples of expenses may include:

- Pole rights and/or right of way expenses,
- Maintenance contracts,
- Equipment necessary to make service functional, and
- Expenses necessary to operate the network.

What is an IRU?

- An IRU is a right to use facilities for a certain period of time that is commensurate with the remaining useful life of the asset (usually 20 years, although parties may negotiate a different term).
- An IRU differs from a lease for services because it confers the grantee the vestiges of ownership.



Network Facilities and Equipment

HCF Order, Section V.A.3

What is a pre-paid lease?

- Pre-payment for services provided by a third-party for an agreed upon period.
- Typically carrier-provided services for a period of 10, 15, or 20 years.

USAC will require the inclusion of liquidation clauses in any pre-paid lease arrangement.



Competitive Bidding

Competitive Bidding Exemptions & Evergreen Contracts



Competitive Bidding Exemptions

HCF Order, Section VI.B.6.d

Exemptions to Competitive Bidding Process

- Annual undiscounted cost less than or equal to \$10,000 (unlikely for consortium applicants)
- Purchasing from government-negotiated Master Services Agreement (MSA)
- MSAs approved under Pilot Program or HCF Program
- A multi-year contract deemed evergreen by USAC
- Contracts negotiated under Schools and Libraries (E-rate) Program



Evergreen Contracts

HCF Order, Section VI.B.6.d

What is an “evergreen contract?”

- If USAC has designated a multi-year contract as evergreen, then for the life of the contract, HCPs do not need to annually re-bid the service or post an FCC Form 461. (47 C.F.R. Section 54.642(h)(4))

What is an “evergreen contract?” (cont’d)

- A new contract can be designated as “evergreen” if it meets all of the following criteria:
 - Signed by the HCP or consortium lead entity;
 - Specifies service type, bandwidth, and quantity;
 - Specifies term of the contract;
 - Specifies cost of services to be provided; and
 - Includes physical address or other identifying information of HCPs purchasing from contract.

Voluntary Extensions (47 CFR Section 54.642(h)(4)(iii))

Participants may exercise voluntary contract extensions without undergoing additional competitive bidding if:

- The voluntary extension is memorialized in the evergreen contract,
- 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
- The voluntary extension(s) do not exceed five years in the aggregate.



Competitive Bidding

Post-Commitment Activity



Post-Commitment Activity

HCF Order, Section VI.E

Contract Modifications

- HCPs should first look to state or local procurement laws to determine whether a proposed contract modification would be considered minor and therefore exempt from state or local competitive bidding processes.
- If the state or local procurement laws are silent or inapplicable, an eligible HCP may seek to modify a contract without undertaking the competitive bidding process if the proposed modification is not a “cardinal change.”
 - A cardinal change doctrine looks at whether the modified work is essentially the same as that for which the parties contracted.

Contract Modifications (cont'd)

- If it is not a cardinal change, HCPs must file revised commitment requests within 30 days of the modification.
 - NOTE: Parties are not guaranteed support for modified services.
- Examples of contract modifications may include:
 - Consortium applicants requesting to add new HCPs to an existing MSA if contemplated in the RFP; and
 - Consortium applicants requesting to modify bandwidth speed of member HCPs, if contemplated in the RFP.

Site and Service Substitutions (47 CFR Section 54.646)

A consortium leader may request a site and service substitution if:

- The requested change is within the scope of the controlling request for services, including any RFP used in the competitive bidding process;
- Substitution is provided for in the contract, within the change clause, or constitutes a minor modification;
- The site is an eligible HCP and the service is eligible for support under the HCF Program; and
- The substitution does not violate any contract provision or state or local procurement laws.