

Final Exception Document
Mutually agreed to by the State of Arizona and TW Telecom

The following are the exceptions which were submitted by TW Telecom in response to the State of Arizona's solicitation ADSPO14-00004241. Any exceptions not addressed by the State in this document were not considered and shall be deemed not accepted by the State and shall not become a part of any resultant contract.

All accepted exceptions shall be incorporated within in applicable sections of a resultant contract. Approved exceptions shall override the original RFP language, unless the acceptance was only clarification.

1) Solicitation section reference: Scope of Work

7.2.3 Restore and Response times:

7.2.3.1 Metro Areas:

7.2.3.1.1 Specific sites to be provided after contract award.

7.2.3.1.1.1 Full restoration shall be completed within two (2) hours.

7.2.3.2 Rural Areas:

7.2.3.2.1 Specific sites to be provided after contract award.

7.2.3.2.1.1 Full restoration shall be completed within four (4) hours.

7.2.3.3 If full restoration cannot be achieved within the above stated time frames, the customer shall be notified immediately upon discovery of such event that hinders restoration.

7.2.3.3.1 Every hour that service has not been restored the carrier or provider shall be responsible for updating the customer of status on the restoration project.

TW Exception:

The TW Telecom target for on-net MTTR is two hours and for off-net locations, the target is six hours.

TW Alternative Language:

TW Telecom suggest that these times be incorporated.

State's Initial Response: Unacceptable

The State would accept the following alternate language:

7.2.3.1.1.1 Full restoration shall be completed within two (2) hours of arrival onsite

tw response: tw telecom will comply with the above restoration times pending clarification on penalties in Section 7.2.4.1: Clarification -The penalties associated with full service restoration will not exceed 1 month of monthly service charges associated to the specific affected service.

State's Final Response: Accepted as clarification, however no change to original language of the RFP required. Revised language for section 7.2.4.1 is found at the end of this exception document.

2) Solicitation section reference: Special Terms and Conditions

17.3 Billing SLA Affected Services

Contractor shall process invoices in accordance with the Billing and Payment Section of resultant Service Level Agreements. If, after the SLA is resolved the Customer owes the disputed amount in part or in whole to the Contractor, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month on the outstanding balance.

TW Exception:

TW Telecom systems can handle 1% and not an increment less than 1%

TW Alternative Language:

TW Telecom suggest the percentage be changed to 1%

State's Initial Response: Acceptable, as long as the maximum amount billed does not exceed two-thirds of one percent for the month.

tw response: tw telecom accepts the State of Arizona response language and will comply.

State's Final Response: Accepted as clarification, however no change to original language of the RFP required.

3) Solicitation section reference: Special Terms and Conditions

17.5 Billing Adjustments

Revised invoices or billing adjustments shall apply only to Contractor's Services that can be verified by the Customer, and requests for such adjustments must be submitted in writing to the Customer within 60 days of Service invoice delivery; shall reference the original invoice in which the error was made, and contain sufficient level of detail to make a reasonable determination of fact. Billing Adjustments, once determined to be fact, shall be documented in writing on all forms of billing, paper and electronic, in the next billing cycle.

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TW Exception:
Agreement with respect to matters like adjustments to billing should be reciprocal

TW Alternative Language:
TW Telecom can agree that requests for billing adjustment must be submitted in writing within 60 days of Service invoice delivery; as long as Customer agrees that billing disputes must be submitted in writing within 60 days of Service invoice delivery

State's Initial Response: Understood

tw response: tw telecom accepts the State of Arizona language and will comply.

State's Final Response: Accepted as clarification, however no change to original language of the RFP required.

4) Solicitation section reference: Special Terms and Conditions

DATA SECURITY / SECURITY

20.1 Data Privacy/Security Incident Management.

Contractor and its agents shall cooperate and collaborate with appropriate State personnel to identify and respond to an information security or data privacy incident, including a security breach.

20.1.1 Threat of Security Breach

Contractor(s) agrees to notify the Customer's Chief Information Officer (CIO), the Customer's Chief Information Security Officer (CISO) and other key personnel as identified by the Customer of any perceived threats placing the supported infrastructure and/or applications in danger of breach of security. The speed of notice shall be at least commensurate with the level of threat, as perceived by the Contractor(s). Customer shall agree to provide contact information for the CIO, the CISO and key personnel to the Contractor if applicable.

20.1.2 Discovery of Security Breach

Contractor agrees to immediately notify the Customer's CIO, the CISO and key personnel as identified by the State of a discovered breach of security. Customer shall agree to provide contact information for the CIO, the CISO and key personnel to the Contractor if applicable.

TW Exception:
The procedure is to notify customers when an actual breach occurs as required by law.

TW Alternative Language:
TW Telecom suggests that "threats" be changed to reflect actual breaches that have occurred.

State's Initial Response: Unacceptable

tw response: tw telecom accepts the State of Arizona original RFP document language and will comply pending clarification: Clarification - tw agrees to notify the Customer of any confirmed security breaches or unmitigated AND imminent threats resulting in unauthorized access to the services provided to the customer.

State's Final Response: Accepted as clarification, however no change to original language of the RFP required.

5) Solicitation section reference:

Special Terms and Conditions, Section 24, Indemnification
Special Terms and Conditions, Section 25, IP Indemnification
Uniform Terms and Conditions, Section 6.2, Indemnification
Uniform Terms and Conditions, Section 6.2, Indemnification – Patent and Copyright

TW Exception:
It is appropriate to limit TW Telecom's obligations to indemnify the State

TW Alternative Language:
TW Telecom would indemnify Indemnitee from and against all losses or damages arising from or related to bodily injury or physical damage to tangible property caused by the negligence or willful misconduct of TW Telecom.

State's Initial Response: Unacceptable

tw response: tw telecom accepts the State of Arizona original RFP document language and will comply, thus withdrawing our previous exception.

State's Final Response: Exception withdrawn by tw telecom.

6) Solicitation section reference: Special Terms and Conditions

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- 28.1 MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.
- 28.1.1 Commercial General Liability – Occurrence Form Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.
- 28.1.4 Technology Errors & Omissions Insurance
- Each Claim \$ 2,000,000
 - Annual Aggregate \$ 2,000,000
- 28.1.4.1 Such insurance shall cover any and all errors, omissions, or negligent acts in the delivery of products, products, services, and/or licensed programs under this contract.
- 28.1.4.2 In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- 28.1.5 Network Security (Cyber) and Privacy Liability (If applicable to service to be provided by the Contractor)
- Each Claim \$ 2,000,000
 - Annual Aggregate \$ 2,000,000
- 28.1.5.1.1 Such insurance shall include but not limited to coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs – includes breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expense coverage (data asset protection), network business interruption, computer fraud coverage, funds transfer fund
- 28.1.5.2 In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- 28.6 SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insured under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

TW Exception:

Two issues: 1) is that all our contractors may not carry the \$5 million liability limit required in 28.1.1 and 2) that all our contractors don't perform services / operations necessitating the requirements in

28.1.4 Technology Errors & Omissions Insurance and 28.1.5 Network Security (Cyber) and Privacy Liability.

There are two coverages required that we meet through one insurance policy. Requirements in

28.1.4 Technology Errors & Omissions Insurance and 28.1.5 Network Security (Cyber) and Privacy Liability are both provided through our Network and Technology Errors & Omissions Insurance. We do not have two separate policies in this regard.

28.6 – Once we select a subcontractor on a per job basis, we would then provide the certificate. TW Alternative Language:

TW Telecom suggest adding to 28.1.1, "any party may satisfy insurance policy limits required herein through the use of primary and umbrella / excess liability insurance policies."

State's Initial Response:: Unacceptable

With the exception: Network and Technology Errors & Omissions Insurance is Acceptable coverage for 28.1.4 Technology Errors & Omissions Insurance and 28.1.5 Network Security (Cyber) and Privacy Liability

tw response: Given the State of Arizona's acceptance and understanding outlined above, tw telecom accepts the State of Arizona original RFP document language and will comply, thus withdrawing our original exception.

State's Final Response: Exception withdrawn by tw telecom.

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The State of Arizona has revised language within resultant contracts as follows:

1. Scope of Work section 7.2.4.1, shall be deleted in its entirety and replaced with the following language:
 - 7.2.4.1 If Full Service Restoration is not completed the Contractor shall be liable for 1/720 of the MRC for each hour after the allowable response time has been exhausted. This will be seen in the form of a credit against the billed amount at the end of the month.

An "Outage" is an interruption in Service or use of the Equipment caused by a failure of the Contractor's Network, excluding degradation or disruption due to planned or emergency maintenance or an event outside of the Contractor's direct control.
2. Special Terms and Conditions section 6.1 Method of Assessment shall be deleted in its entirety and replaced with the following language:
 - 6.1 Method of Assessment. At the completion of each quarter, the Contractor reviews all sales under their contract in preparation for submission of their Usage Report. The Contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report. An updated list of State Purchasing Cooperative members may be found at: <https://spo.az.gov/state-purchasing-cooperative>. At its option, the State may expand or narrow the applicability of this fee.

For this contract only, the State of Arizona will not assess the 1% administrative fee to Contractors for E-Rate eligible purchases. E-Rate eligible purchases can be made by eligible recipients per 47 CFR §54.501. To determine if a customer is an eligible recipient the Contractor shall refer to the following web address:
<http://usac.org/sl/applicants/beforeyoubegin/definitions.aspx>

The Contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

 - o Total sales receipts from State agencies, boards and commissions;
 - o Total sales receipts from members of the State Purchasing Cooperative; and
 - o Total Administrative Fee amount based on one percent (1.0%) of the sales receipts from members of the State Purchasing Cooperative.